

MONTANA LEGISLATIVE HISTORY

Chapter 584 1995

Bill H _____ S 382

Original bill & history / c

H. Committee on Natural Resources S. Committee on Natural Resources

Hearing Date(s) _____ c

3/31 ✓ c

_____ c

_____ c

Date Out 4/5 ✓ c

Hearing Date(s) _____ c

2/17 ✓ c

_____ c

3/15 ✓ c

3/17 ✓ c

Free Conf. Comm: 4/12 ✓

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

SB 382 INTRODUCED BY HARP, ET AL.

GENERALLY REVISE METHOD OF SELECTING CLEANUP REQUIRED FOR
REMEDIAL ACTIONS

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO NATURAL RESOURCES		
2/14	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/21	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		
3/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/25	2ND READING PASSED	37	10
3/27	3RD READING PASSED	38	11
3/27	REVISED FISCAL NOTE RECEIVED		
	TRANSMITTED TO HOUSE		
3/27	REVISED FISCAL NOTE PRINTED		
3/28	FIRST READING		
3/28	REFERRED TO NATURAL RESOURCES		
3/31	HEARING		
4/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/07	2ND READING CONCURRED	67	31
4/08	3RD READING CONCURRED	71	27
	RETURNED TO SENATE WITH AMENDMENTS		
4/12	MOTION CARRIED TO ALLOW HOUSE AMENDMENTS TO BE CONSIDERED AFTER THE 73RD DAY TRANSMITTAL DEADLINE	44	6
4/12	2ND READING AMENDMENTS NOT CONCURRED	49	0
4/12	FREE CONFERENCE COMMITTEE APPOINTED		
4/12	HEARING		
4/12	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/13	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	31	19
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	32	18
	HOUSE		
4/12	FREE CONFERENCE COMMITTEE APPOINTED		
4/12	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/13	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	51	45
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	64	34
4/18	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 584		
	EFFECTIVE DATE: 05/01/95		

SB 383 INTRODUCED BY TVEIT, ET AL.

PROVIDE FOR DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION
TAXES

2/13	INTRODUCED
2/13	FIRST READING
2/13	REFERRED TO TAXATION
2/14	FISCAL NOTE REQUESTED
2/20	FISCAL NOTE RECEIVED
2/21	FISCAL NOTE PRINTED
3/10	HEARING

SENATE BILL NO. 382

INTRODUCED BY

HARP



A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING NATURAL RESOURCE AND ENVIRONMENTAL LAWS; AMENDING SECTIONS 15-38-202, 75-10-701, 75-10-704, 75-10-711, 75-10-715, 75-10-721, 75-10-722, 75-10-724, AND 85-1-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund -- expenditure -- minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(iv) \$1,025,000 to be deposited into the renewable resource grant and loan program state special

1 revenue account, created by 85-1-604, for the purpose of making grants;

2 (v) \$2,200,000 to be deposited into the reclamation and development grants state special revenue
3 account, created by 90-2-1104, for the purpose of making grants; and

4 (vi) beginning in fiscal year 1994, \$250,000 to be deposited into the water storage state special
5 revenue account created by 85-1-631.

6 (b) The remainder of the interest income is allocated as follows:

7 (i) Thirty-eight percent of the interest income of the resource indemnity trust fund must be
8 allocated to the renewable resource grant and loan program state special revenue account created by
9 85-1-604.

10 (ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to
11 the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

12 (iii) Forty-one and one-half percent of the interest income from the resource indemnity trust fund
13 must be allocated to the reclamation and development grants account provided for in 90-2-1104.

14 (iv) Five and one-half percent of the interest income of the resource indemnity trust fund must be
15 allocated to the environmental quality protection fund provided for in 75-10-704.

16 (3) Any formal budget document prepared by the legislature or the executive branch that proposes
17 to appropriate funds from the resource indemnity trust interest account other than as provided for by the
18 allocations in subsection (2) must specify the amount of money from each allocation that is proposed to
19 be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and
20 publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the
21 legislative appropriation process or otherwise during a legislative session.

22 **15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund -- expenditure --**
23 **minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into
24 the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments.
25 All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund
26 until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and
27 expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be
28 appropriated by the legislature and expended, provided that the balance in the fund may never be less than
29 \$100 million.

30 (2) (a) At the beginning of each biennium, there is allocated from the interest income of the

1 resource indemnity trust fund:

2 (i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the
3 conditions of 75-1-1101;

4 (ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account
5 pursuant to the conditions of 82-11-161;

6 (iii) ~~beginning in fiscal year 1995,~~ \$240,000, which is statutorily appropriated, as provided in
7 17-7-502, from the renewable resource grant and loan program state special revenue account to support
8 the operations of the environmental science-water quality instructional programs at northern Montana
9 college to be used for support costs, for matching funds necessary to attract additional funds to further
10 expand statewide impact, and for enhancement of the facilities related to the programs;

11 (iv) beginning in fiscal year ~~1996~~ 1997, ~~\$2~~ \$1 million to be deposited into the renewable resource
12 grant and loan program state special revenue account, created by 85-1-604, for the purpose of making
13 grants;

14 (v) beginning in fiscal year ~~1996~~ 1997, ~~\$3~~ \$2 million to be deposited into the reclamation and
15 development grants state special revenue account, created by 90-2-1104, for the purpose of making grants;
16 and

17 (vi) beginning in fiscal year 1996, \$500,000 to be deposited into the water storage state special
18 revenue account created by 85-1-631.

19 (b) The remainder of the interest income is allocated as follows:

20 (i) ~~Thirty-six~~ Sixteen percent of the interest income of the resource indemnity trust fund must be
21 allocated to the renewable resource grant and loan program state special revenue account created by
22 85-1-604.

23 (ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated
24 to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

25 (iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated
26 to the reclamation and development grants account provided for in 90-2-1104.

27 (iv) ~~Six~~ Sixteen percent of the interest income of the resource indemnity trust fund must be
28 allocated to the environmental quality protection fund provided for in 75-10-704.

29 (v) Ten percent of the interest income from the resource indemnity trust fund must be allocated
30 to the abandoned mine state special revenue account provided in [section 9].

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 2. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Disposed" or "disposal" means:

(a) an affirmative act resulting in a discharge, deposit, injection, dumping, storing, spilling, leaking, or placing of any hazardous or deleterious substance on any land or water so that the hazardous or deleterious substance may enter the environment, be emitted into the air, or be discharged into any waters, including ground waters.

(b) Disposed or disposal does not include the passive migration, movement, or dispersion of a hazardous or deleterious substance or any constituent through the environment that occurs after the initial disposal of the hazardous or deleterious substance into the environment.

~~(3)(4)~~ (4) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

~~(4)-(a)(5)~~ (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

~~(5)~~(6) "Fund" means the environmental quality protection fund established in 75-10-704.

~~(6)~~(7) (a) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

~~(a)~~(i) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

~~(b)~~(ii) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

~~(c)~~(iii) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

~~(d)~~(iv) any petroleum product.

(b) Hazardous or deleterious substance does not include any waste or constituent, the regulation of which under the Solid Waste Disposal Act, 42 U.S.C. 6901, has been suspended by an act of congress or that has been excluded from the definition of hazardous waste under 40 CFR 261.4(b)(7).

~~(7)~~(8) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

~~(8)~~ ~~(a)~~(9) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1

1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been
2 released into the environment upstream of the dam and has subsequently come to be located in the
3 reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for
4 a release or threatened release under 75-10-715(1).

5 ~~(9)~~(10) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium,
6 commercial entity, partnership, association, corporation, commission, state or state agency, political
7 subdivision of the state, interstate body, or the federal government, including a federal agency.

8 ~~(10)~~(11) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
9 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any
10 other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of
11 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

12 ~~(11)~~(12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
13 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into
14 the environment (including the abandonment or discarding of barrels, containers, and other closed
15 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the
16 indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in
17 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
18 80-10-101(2) when applied as part of accepted agricultural practice.

19 ~~(12)~~(13) "Remedial action" includes all notification, investigation, administration, monitoring,
20 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
21 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
22 threatened release.

23 ~~(13)~~(14) "Remedial action contract" means a written contract or agreement entered into by a
24 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
25 request issued by the department, the United States, or any federal agency, to provide a remedial action
26 with respect to a release or threatened release of a hazardous or deleterious substance.

27 ~~(14)~~(15) "Remedial action contractor" means:

28 (a) any person who enters into and is carrying out a remedial action contract; or

29 (b) any person who is retained or hired by a person described in subsection ~~(14)(a)~~ (15)(a) to
30 provide services relating to a remedial action.

1 ~~(15)~~(16) "Remedial action costs" means reasonable costs that are attributable to or associated with
2 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal
3 or enforcement activities, contracts, feasibility studies, or health studies."

4
5 **Section 3.** Section 75-10-704, MCA, is amended to read:

6 **"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund
7 an environmental quality protection fund to be administered as a revolving fund by the department. The
8 department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.
9 The use of the fund is limited to remediation of sites not listed on the national priorities list.

10 (2) The fund may be used by the department only to:

11 (a) provide the department with funding for remedial actions to the extent that parties liable under
12 75-10-715 cannot pay all remedial action costs required to be expended to remedy releases at a facility;

13 (b) reimburse liable parties whose contributions to remedial action costs exceed their proportionate
14 liability;

15 (c) carry out the provisions of this part and provide for remedial actions taken by the department
16 pursuant to this part in response to a release of hazardous or deleterious substances; and

17 (d) carry out the provisions of this part.

18 (3) The department shall:

19 (a) establish and implement a system for prioritizing sites for remedial action based on potential
20 effects on human health and the environment; and

21 (b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain
22 the participation and financial contribution of liable persons for the remedial action, to achieve remedial
23 action, and to recover costs and damages incurred by the state.

24 (4) There must be deposited in the fund:

25 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs
26 recovered pursuant to 75-10-715;

27 (b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed
28 pursuant to 75-10-711(5);

29 (c) funds appropriated to the fund by the legislature; and

30 (d) funds received from the interest income of the resource indemnity trust fund pursuant to

1 15-38-202.

2 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and
3 additional money remains in the fund, the department shall seek additional authority to spend money from
4 the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

5 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the
6 department may apply to the governor for a grant from the environmental contingency account established
7 pursuant to 75-1-1101."

8

9 **Section 4.** Section 75-10-711, MCA, is amended to read:

10 **"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings.** (1) The department may
11 take remedial action whenever:

12 (a) there has been a release or there is a substantial threat of a release into the environment that
13 may present an imminent and substantial endangerment to the public health, welfare, or safety or the
14 environment; and

15 (b) the appropriate remedial action will not be done properly and expeditiously by any person liable
16 under 75-10-715(1).

17 (2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to
18 believe that a release has occurred or is about to occur, the department may undertake remedial action in
19 the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by
20 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the
21 release or the threat of release and the extent and imminence of the danger to the public health, safety,
22 or welfare or the environment.

23 (3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and
24 abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund
25 to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the
26 person or persons liable for the release or threatened release and:

27 (a) is unable to determine the identity of the liable person or persons in a manner consistent with
28 the need to take timely remedial action; or

29 (b) the person or persons determined by the department to be liable under 75-10-715(1) have been
30 informed in writing of the department's determination and have been requested by the department to take

1 appropriate remedial action but are unable or unwilling to take action in a timely manner; and

2 (c) the written notice to each person informs ~~him~~ that person that if ~~he~~ the person is subsequently
3 found liable pursuant to 75-10-715(1), ~~he~~ the person may be required to reimburse the fund for the state's
4 remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

5 (4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to
6 believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare
7 or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1)
8 cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health,
9 safety, or welfare or the environment.

10 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707
11 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than
12 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining
13 the amount of any penalty assessed, the court may take into account;

14 (i) the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the
15 person liable under 75-10-715(1), ~~his~~ the person's ability to pay;

16 (ii) any prior history of ~~such~~ violations;

17 (iii) the degree of culpability;

18 (iv) the economic benefit or savings, if any, resulting from the noncompliance; and

19 (v) any other matters ~~as~~ that justice may require.

20 (b) Civil penalties collected under this subsection must be deposited into the environmental quality
21 protection fund established in 75-10-704.

22 (6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the
23 following actions:

24 (a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

25 (b) an action to enforce an order issued under 75-10-707 or this section;

26 (c) an action to recover a civil penalty for violation of or failure to comply with an order issued
27 under 75-10-707 or this section; or

28 (d) an action by a person to whom an order has been issued to determine the validity of the order,
29 only if the person has been in compliance and continues in compliance with the order pending decision of
30 the court.

1 (7) In considering objections raised in a judicial action regarding orders issued under this part, the
2 court shall uphold and enforce an order issued by the department unless the objecting party can
3 demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary
4 and capricious or otherwise not in accordance with law.

5 (8) Instead of issuing a notification or an order under this section, the department may bring an
6 action for legal or equitable relief in the district court of the county where the release or threatened release
7 occurred or in the first judicial district as may be necessary to abate any imminent and substantial
8 endangerment to the public health, safety, or welfare or the environment resulting from the release or
9 threatened release.

10 (9) ~~The~~ Except as provided in 75-10-712, the department may not take remedial action pursuant
11 to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response,
12 Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial
13 action is necessary to carry out the purposes of this part as amended. This subsection may not restrict the
14 department from entering into or carrying out cooperative agreements under Title 75, chapter 10, part 6,
15 or from accepting any deferral to the state of a CERCLA site from the U.S. environmental protection
16 agency."

17
18 **Section 5.** Section 75-10-715, MCA, is amended to read:

19 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses. (1)**

20 Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (5),
21 the following persons are ~~jointly and severally~~ liable for a release or threatened release of a hazardous or
22 deleterious substance from a facility:

23 ~~(a) a person who owns or operates a facility where a hazardous or deleterious substance was~~
24 ~~disposed of;~~

25 ~~(b)~~ (a) a person who at the time of disposal of a hazardous or deleterious substance owned or
26 operated a facility where the hazardous or deleterious substance was disposed of;

27 ~~(c)~~ (b) a person who generated, possessed, or was otherwise responsible for a hazardous or
28 deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment
29 of the substance or arranged with a transporter for transport of the substance for disposal or treatment;

30 and

1 ~~(d)~~(c) a person who accepts or has accepted a hazardous or deleterious substance for transport
2 to a disposal or treatment facility.

3 (2) A person identified in subsection (1) is proportionately liable for the following costs:

4 (a) ~~all~~ remedial action costs incurred by the state; and

5 (b) damages for injury to, destruction of, or loss of natural resources caused by the release or
6 threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim
7 for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were
8 specifically identified as an irreversible and irretrievable commitment of natural resources in an approved
9 final state or federal environmental impact statement or other comparable approved final environmental
10 analysis for a project or facility that was the subject of a governmental permit or license and the project
11 or facility was being operated within the terms of its permit or license.

12 (3) If the person liable under 75-10-715(1) fails, without sufficient cause, to comply with a
13 department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification
14 by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to
15 exceed two times the amount of any costs incurred by the state pursuant to this section.

16 (4) The department may initiate civil proceedings in district court to recover remedial action costs,
17 natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs
18 and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,
19 damages, or penalties lies in the county where the release occurred or where ~~the~~ any person liable under
20 75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.

21 (5) ~~No~~ A person is not liable under subsections (1) through (3) if that person can establish by a
22 preponderance of the evidence that:

23 (a) the department failed to follow the notice provisions of 75-10-711 when required;

24 (b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed
25 any hazardous or deleterious substance or over which the person had any ownership, authority, or control
26 and was not caused by any action or omission of the person;

27 (c) the release or threatened release occurred solely as a result of:

28 (i) an act or omission of a third party other than either an employee or agent of the person; or

29 (ii) an act or omission of a third party other than one whose act or omission occurs in connection
30 with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by

1 a preponderance of the evidence that ~~he~~ the person:

2 (A) exercised due care with respect to the hazardous or deleterious substance concerned, taking
3 into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts
4 and circumstances; and

5 (B) took precautions against foreseeable acts or omissions of a third party and the consequences
6 that could foreseeably result from those acts or omissions;

7 (d) the release or threat of release occurred solely as the result of an act of God or an act of war;

8 (e) the release or threatened release was from a facility for which a permit had been issued by the
9 department, the hazardous or deleterious substance was specifically identified in the permit, and the release
10 was within the limits allowed in the permit;

11 (f) in the case of assessment of penalties under subsection (3), that factors beyond the control of
12 the person prevented the person from taking timely remedial action; or

13 (g) the person accepted only household refuse (garbage, trash, or septic tank sanitary wastes
14 generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to
15 a solid waste disposal facility, unless that person knew or reasonably should have known that the
16 hazardous or deleterious substance was present in the refuse.

17 (6) ~~(a) For the purpose of subsection (5)(c)(iii), the term "contractual relationship" includes but is~~
18 ~~not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real~~
19 ~~property on which the facility is located was acquired by the person after the disposal or placement of the~~
20 ~~hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances~~
21 ~~is also established by the person by a preponderance of the evidence:~~

22 ~~(i) At the time the person acquired the facility, the person did not know and had no reason to know~~
23 ~~that a hazardous or deleterious substance that is the subject of the release or threatened release was~~
24 ~~disposed of on, in, or at the facility.~~

25 ~~(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or~~
26 ~~through any other involuntary transfer or acquisition or through the exercise of eminent domain authority~~
27 ~~by purchase or condemnation.~~

28 ~~(iii) The person acquired the facility by inheritance or bequest.~~

29 ~~(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through~~
30 ~~(6)(a)(iii), the person shall establish that he has satisfied the requirements of subsections (5)(c)(i) or~~

~~(5)(e)(iii).~~

~~(e) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:~~

- ~~(i) any specialized knowledge or experience on the part of the person;~~
- ~~(ii) the relationship of the purchase price to the value of the property if uncontaminated;~~
- ~~(iii) commonly known or reasonably ascertainable information about the property;~~
- ~~(iv) the obviousness of the presence or the likely presence of contamination on the property; and~~
- ~~(v) the ability to detect the contamination by appropriate inspection.~~

~~(d)(a)~~ (i) Nothing in subsections (5)(b) and (5)(c) or in this subsection (6) may diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1) through (3) and no defense under subsection (5)(b) or (5)(c) is available to that person.

~~(e)(b)~~ Nothing in this subsection (6) affects the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility."

Section 6. Section 75-10-721, MCA, is amended to read:

"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance. (1) A remedial action performed under this part or a voluntary cleanup under [sections 10 through 16] must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures ~~present and future~~ protection of public health, safety, and welfare and of the environment that is consistent with this section.

(2) In approving or carrying out remedial actions performed under this part, the department:

~~(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;~~

~~(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well suited to the site conditions; and~~

~~(c) shall select remedial actions that, at a minimum, protect the public health, safety, and welfare and the environment. A remedial action must be considered protective of the public health, safety, and welfare and of the environment when the amount of site-specific risk reduction is proportionate to the total cost of the remedial action or when the remedial action reaches a level of risk reduction of 10 to the minus 4, whichever is more cost-effective. and that:~~

~~(i) use permanent solutions;~~

~~(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and~~

~~(iii) are cost effective, taking into account the total short and long term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.~~

(3) To the extent consistent with the requirements of subsection (2), the department, in selecting remedial actions under this part, shall consider for each remedial action:

(a) technical practicability;

(b) long-term and short-term reliability; and

(c) local community and local government acceptance.

(4) To the extent consistent with the requirements of subsection (2), the department shall give equal consideration to engineering controls, institutional controls, and treatment.

(5) All remedial actions selected by the department under this part must be based on current land and resource uses unless the department can demonstrate on the administrative record that there are reasonably anticipated uses that would require remedial actions that provide for a higher level of protection for the public health, safety, and welfare, and for the environment. Only reasonably anticipated land and resource uses, as determined by applicable local land and resource use requirements, regulations, ordinances, restrictions or covenants, may be considered.

~~(3)(6)~~ The department may shall exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection (1) and this part.

1 ~~(4)(7)~~ The department may require financial assurance from a liable person in an amount that the
2 department determines will ensure the long-term operation and maintenance of the remedial action site.
3 The liable person shall provide the financial assurance by any one method or combination of methods
4 satisfactory to the department, including but not limited to insurance, guarantee, performance or other
5 surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."

6
7 **Section 7.** Section 75-10-722, MCA, is amended to read:

8 **"75-10-722. Payment of state costs and penalties.** (1) The department shall keep a record of the
9 state's remedial action costs.

10 (2) Based on this record, the department ~~shall~~ may require a person liable under 75-10-715 to pay
11 the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

12 (3) If the state's remedial action costs and penalties are not paid by the liable person to the
13 department within 60 days after receipt of notice that the costs and penalties are due, the department shall
14 bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

15 (4) An action to recover remedial action costs may be brought under this section at any time after
16 any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability
17 for remedial action costs that is binding on any subsequent action or actions to recover further remedial
18 action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show
19 on the record that the costs are not reasonable and are not consistent with this part.

20 (5) An initial action for recovery of remedial action costs must be commenced within 6 years after
21 initiation of physical onsite construction of the remedial action.

22 (6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be
23 deposited into the environmental quality protection fund established in 75-10-704."

24
25 **Section 8.** Section 75-10-724, MCA, is amended to read:

26 **"75-10-724. Liability apportionment and contribution.** (1) ~~Any person held jointly and severally~~
27 ~~liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties~~
28 ~~as provided in this section. The burden is on each liable person to show how his liability should be~~
29 ~~apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider~~
30 In any action initiated under 75-10-715 by the department or in any action initiated under subsection (2)

1 by any person or persons liable under 75-10-715(1), the trier of fact shall determine the proportionate share
2 of the aggregate liability for each person who is found liable under 75-10-715(1). For purposes of
3 determining the proportionate share of the aggregate liability, the trier of fact shall consider, for each person
4 found liable under 75-10-715(1), the following:

5 (a) the extent to which ~~the~~ each person's contribution to the release of a hazardous or deleterious
6 substance can be distinguished;

7 (b) the amount of hazardous or deleterious substance involved;

8 (c) the degree of toxicity of the hazardous or deleterious substance involved;

9 (d) the degree of involvement of and care exercised by ~~the~~ each person in manufacturing, treating,
10 transporting, or disposing of the hazardous or deleterious substance;

11 (e) the degree of cooperation by ~~the~~ each person with federal, state, or local officials to prevent
12 any harm to the public health, safety, or welfare or the environment; ~~and~~

13 (f) knowledge by ~~the~~ each person of the hazardous nature of the substance; and

14 (g) any remedial actions voluntarily taken by a person.

15 (2) ~~If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate~~
16 ~~share of the aggregate liability, the person has the right of contribution from any other liable person. If for~~
17 ~~any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of~~
18 ~~the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid~~
19 ~~portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action~~
20 ~~for contribution from the noncontributing person. A person liable under 75-10-715(1) may have a right of~~
21 contribution for the recovery of the remedial action costs incurred by a person under this part against any
22 other nonsettling party found liable under 75-10-715(1) in the proportionate shares determined under
23 subsection (1).

24 (3) For sites not listed on the national priorities list, if for any reason all or part of the contribution
25 from a person liable for contribution cannot be obtained, a person may apply to and must, in accordance
26 with this subsection, receive reimbursement from the department from the environmental quality protection
27 fund established in 75-10-704. If the environmental quality protection fund does not contain sufficient
28 money to pay received claims for reimbursement, the fund and the department are not liable for making any
29 reimbursement at that time. When the fund contains sufficient money, approved claims must be
30 subsequently reimbursed in the order in which they were approved by the department. The department

1 shall approve claims for reimbursement of remedial action costs under this subsection unless the remedial
2 action costs are unreasonable, unnecessary, or inconsistent with this part.

3 (4) A person who has incurred remedial action costs may seek to recover those costs from any
4 person who is liable or potentially liable under 75-10-715. A person who is liable under this subsection is
5 not liable for more than the person's proportionate share of the aggregate liability determined in accordance
6 with the criteria in subsection (1). Subsections (3) and (4) of 75-10-714 apply to any actions under this
7 subsection."

8
9 **NEW SECTION. Section 9. Abandoned mine state special revenue account created.** (1) There is
10 an abandoned mine special revenue account within the state special revenue account fund established in
11 17-2-102.

12 (2) There must be paid into the abandoned mine state special revenue account money allocated
13 from the resource indemnity trust fund interest earnings pursuant to 15-38-202.

14 (3) Money that was not encumbered or expended from the abandoned mine state special revenue
15 account during the previous biennium must remain in the account.

16 (4) Deposits to the abandoned mine state special revenue account are to be placed in short-term
17 investments and accrue interest, which must be deposited in the abandoned mine state special revenue
18 account.

19 (5) The purpose of the abandoned mine state special revenue account is to provide the funding to
20 the department of state lands for the cleanup and reclamation of abandoned mines.

21 (6) The department of state lands shall administer this section as an integral part of the abandoned
22 mines program.

23
24 **NEW SECTION. Section 10. Short title.** [Sections 10 through 16] may be cited as the "Voluntary
25 Cleanup and Redevelopment Act".

26
27 **NEW SECTION. Section 11. Purpose -- legislative declaration.** (1) (a) The purposes of [sections
28 10 through 16] are to provide for the protection of the public health, welfare, and safety and of the
29 environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities and sites that have
30 been previously contaminated with hazardous or deleterious substances.

(b) The legislature further declares that this program is intended to permit and encourage voluntary cleanup of contaminated property by providing interested persons with a method of determining what the cleanup responsibilities will be for reuse or redevelopment of existing sites.

(2) The legislature further intends that this voluntary program:

(a) encourage and facilitate prompt cleanup activities;

(b) eliminate impediments to the sale or redevelopment of previously contaminated property; and

(c) minimize administrative processes and costs.

NEW SECTION. Section 12. Voluntary cleanup plan. (1) A person who owns real property that has been contaminated with hazardous or deleterious substances or any person who may be liable under 75-10-715(1) may submit an application for the approval of a voluntary cleanup plan to the department under the provisions of this section.

(2) A voluntary cleanup plan must include:

(a) an environmental assessment of the real property that describes the contamination, if any, on the property and the risk that the contamination currently poses to the public health, welfare, and safety and to the environment;

(b) a proposal, if needed, for remedial actions consistent with 75-10-721. The proposal must provide a timetable for implementing the proposal and for monitoring the site after the proposed measures are completed.

(c) a description of the manner in which the remedial action plan satisfies the cleanup requirements of 75-10-721 and a description of any current risk to the public health, welfare, or safety or to the environment based upon the current or reasonably anticipated future use of the site.

NEW SECTION. Section 13. Environmental assessment -- requirements. (1) The department may only accept environmental assessments under [sections 10 through 16] that are prepared by a qualified environmental professional. A qualified environmental professional is a person with education, training, and experience in preparing environmental studies and assessments.

(2) An environmental assessment described in this section must include the following information:

(a) the legal description of the site and a map identifying the location and size of the property;

(b) the physical characteristics of the site and areas contiguous to the site, including the location

1 of any surface water bodies and ground water aquifers;

2 (c) the location of any wells located on the site or on areas within a one-half mile radius of the site
3 and a description of the use of those wells;

4 (d) the current and reasonably anticipated future use of onsite ground water;

5 (e) the operational history of the site and the current use of areas contiguous to the site;

6 (f) the current and reasonably anticipated future uses of the site;

7 (g) information concerning the nature and extent of any contamination and releases of hazardous
8 or deleterious substances that have occurred at the site, including any impacts on areas contiguous to the
9 site;

10 (h) any sampling results or other data that characterizes the soil, ground water, or surface water
11 on the site; and

12 (i) a description of the human and environmental exposure to contamination at the site based upon
13 the property's current use and any reasonably anticipated future use proposed by the property owner.
14

15 **NEW SECTION. Section 14. Approval of voluntary action plan -- time limits -- content of notice**
16 **-- expiration of approval.** (1) (a) The department shall provide formal written notification that a voluntary
17 cleanup plan has been approved or disapproved within 60 days after a request by a property owner, unless
18 the property owner or person who may be liable under 75-10-715(1) and the department agree to an
19 extension of the review to a date certain. The review must be limited to a review of the materials
20 submitted by the applicant and documents or information readily available to the department. If the
21 department fails to act on an application within the time limits specified in this subsection (1), the voluntary
22 cleanup plan is approved.

23 (b) The department shall approve a voluntary cleanup plan if, based on the information submitted
24 by the property owner or person who may be liable under 75-10-715(1), the department concludes that
25 the plan will attain a degree of cleanup and control of hazardous or deleterious substances, or both, that
26 complies with the requirements of 75-10-721.

27 (c) If a voluntary cleanup plan is not approved by the department, the department shall promptly
28 provide the applicant with a written statement of the reasons for denial. If the department disapproves a
29 voluntary cleanup plan based upon the applicant's failure to submit the information required by [section 12],
30 the department shall notify the applicant of the specific information omitted by the applicant.

(d) The approval of a voluntary cleanup plan by the department applies only to conditions on the property that exist as of the time of submission of the application. If a voluntary cleanup plan is not initiated within 12 months and completed within 24 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

(2) Written notification by the department that a voluntary cleanup plan is approved must contain the basis for the approval.

(3) (a) Failure of a property owner to materially comply with the voluntary cleanup plan approved by the department pursuant to this section renders the approval void.

(b) Submission of materially misleading information by the applicant in the voluntary cleanup plan renders the department approval void.

(4) Within 60 days after the completion of the voluntary cleanup described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented.

NEW SECTION. Section 15. Voluntary action to preclude remedial action by department. If a party has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan, the department may not, except as provided in 75-10-712, take remedial action under 75-10-711.

NEW SECTION. Section 16. Closure and release from liability. (1) After completion of the remedial actions required by the department under this part or the voluntary action plan, a property owner or any person who may be liable under 75-10-715(1) may petition the department for closure of the site and release from liability for remedial actions and remedial action costs under [sections 10 through 16].

(2) The department shall review the site to determine that the site does not pose a significant threat to public health, welfare, or safety or to the environment as determined in accordance with 75-10-721 and that the responsible parties have:

(a) implemented all appropriate response actions; and

(b) provided for long-term funding for site maintenance or monitoring.

(3) In the event that the petition for closure and release from liability is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons

for denial. Written notification that the petition is approved by the department must include the following language:

"Based upon the information provided by [insert name(s) of property owner(s)] concerning property located at [insert address], it is the opinion of the Montana Department of Health and Environmental Sciences that upon completion of the remedial action or voluntary cleanup plan:

(1) no further action is required to ensure that this property, when used for the purposes identified, is protective of existing and proposed uses and does not pose an unacceptable risk to the public health, welfare, or safety or to the environment at the site; and

(2) [insert name(s) of property owner(s) or any person who may be liable under 75-10-715(1)] are released from any liability, claims, or causes of action for remedial costs and remedial actions at the site."

Section 17. Section 85-1-604, MCA, is amended to read:

"85-1-604. Renewable resource grant and loan program state special revenue account created -- revenues allocated -- limitations on appropriations from account. (1) There is created a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) ~~38% of the amount of~~ interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619;

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; and

(e) 20% of the resource indemnity tax proceeds.

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for the following purposes and subject to the following conditions:

1 (a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b)
2 must be used for renewable resource grants.

3 (b) An amount less than or equal to that paid into the account under 85-1-332 and only that
4 amount may be appropriated for the operation and maintenance of state-owned projects and works. If the
5 amount of money available for appropriation under this subsection (b) is greater than that necessary for
6 operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

7 (c) An amount less than or equal to that paid into the account from the resource indemnity trust
8 account plus any excess from subsection (3)(b) and only that amount may be appropriated from the
9 account for expenditures that meet the policies and objectives of the renewable resource grant and loan
10 program. If the amount of money available for appropriation under this subsection (c) is greater than that
11 necessary for operation and maintenance expenses, the excess may be appropriated as provided in
12 subsection (3)(d).

13 (d) An amount less than or equal to that paid into the account from the sources provided for in
14 subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be
15 appropriated from the account for:

16 (i) loans and grants for renewable resource projects;

17 (ii) ~~for~~ purchase of liens and operation of property as provided in 85-1-615;

18 (iii) ~~for~~ administrative expenses, including but not limited to the salaries and expenses of personnel,
19 equipment, and office space;

20 (iv) ~~for~~ the servicing of loans, including arrangements for obtaining security interests; and

21 (v) ~~for~~ other necessities incurred in administering the loans and grants."
22

23 **NEW SECTION. Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
25 applications, the part remains in effect in all valid applications that are severable from the invalid
26 applications.
27

28 **NEW SECTION. Section 19. Codification instructions.** (1) [Section 9] is intended to be codified
29 as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 9].

30 (2) [Sections 10 through 16] are intended to be codified as an integral part of Title 75, chapter 10,

1 part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 10 through 16].

2
3 NEW SECTION. **Section 20. Applicability.** [This act] applies to all pending actions or proceedings
4 by the state.

5
6 NEW SECTION. **Section 21. Effective date.** [This act] is effective on passage and approval.

7 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0382, as introduced

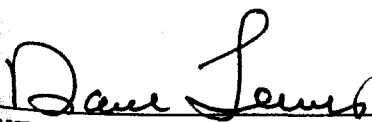
DESCRIPTION OF PROPOSED LEGISLATION:

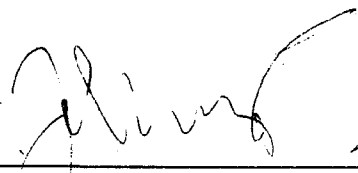
An act generally revising natural resource and environmental laws. The bill amends the resource indemnity trust fund and the comprehensive environmental cleanup and responsibility act (CECRA) and creates a voluntary cleanup act.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The Department of Health and Environmental Sciences (DHES) Environmental Remediation Division (ERD) assumes new responsibilities upon enactment of SB382.
3. Under current law, there is minimal state litigation of state Superfund sites due to the strict, joint and several liability in the Comprehensive Environmental Cleanup and Recovery Act (CECRA).
4. Under the bill, the apportioning of liability would be accomplished through litigation. DHES may be required to participate in litigation to represent insolvent parties and orphan shares (those liable entities that cannot be found or brought into the litigation), to protect the financial interest of the state.
5. SB382 would require the state, utilizing the environmental quality protection fund (EQPF), to reimburse parties for the insolvent and orphan shares for both past and future cleanup costs at hazardous substance sites. DHES would need to develop administrative procedures to handle this new reimbursement function. New procedures would include conducting detailed evaluation of the reasonableness of reimbursement costs claimed and providing for resolution of disputes. In addition, DHES would be required to determine the appropriate proportionate shares for reimbursement claims filed against the fund. Litigation may be necessary to defend DHES determinations.
6. To address the increased litigation and reimbursement workload, 3.00 FTE attorneys (grade 18) and 2.00 FTE paralegals (grade 12) would be necessary. Operating expenses associated with the additional staff are included, with additional equipment (5 computers at \$2,000 each) in FY96 only.
7. The bill would require DHES, when evaluating remedy alternatives, to conduct economic analyses in addition to the analysis usually performed.
8. To address the additional detailed economic analysis required for evaluating remedy alternatives, contracted economic specialists will be required at an estimated cost of \$50,000 per year.
9. Claims on the EQPF for state Superfund sites that may be made by applicants and approved by DHES include the following categories:
 - Reimbursement for portions of past costs incurred by private parties for at least 20 sites. Estimated reimbursement necessary for these sites is approximately \$5,300,000 for the biennium, or \$2,650,000 per year. All past claims are assumed to be filed in the biennium.
 - Reimbursement for portions of future costs incurred by private parties and orphan shares for approximately 25 sites. Estimated reimbursement necessary is approximately \$18,000,000. Claims are estimated to occur evenly over a 10-year period at \$1,800,000 per year.

(continued)

 2-21-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-21-95
JOHN HARP, PRIMARY SPONSOR DATE

Fiscal Note for SB0382, as introduced

SB 382

(continued)

- However, the bill provides that the department will only reimburse claims to the extent that funding in the EQPF is available. (Estimated total new EQPF revenue available to DHES is \$503,500 in FY96 and \$663,500 in FY97.)
10. Twenty-one applications for reimbursement for storage tank cleanup costs from the Montana Petroleum Tank Release Compensation Fund (PTRCF) are not eligible under current laws. These cleanups, plus an estimated additional 24 cleanups in FY96 and FY97, would be eligible for reimbursement from the EQPF under the liability provisions of the proposed bill. Estimated cost of this reimbursement is \$45,000 per site, or \$2,025,000 for the biennium. However, the bill provides that the department will only reimburse claims to the extent that funds in the EQPF are available.
 11. Revenues from the Underground Storage Tank (UST) program will not change as a result of the bill.
 12. The detailed estimates provided in this fiscal note are based on estimated costs associated with about 45 of the existing 271 state Superfund sites in Montana. The remaining sites are discussed under the Long-Range Effects category below.
 13. All inactive/abandoned mines would be referred to the Department of State Lands (DSL), Abandoned Mines Bureau for reclamation.
 14. The highest priority inactive/abandoned mine sites will cost \$5,000,000 - \$10,000,000 each to reclaim. Approximately 20 high priority sites have been identified. The midrange priority inactive/abandoned sites will cost an average of \$1,000,000 to reclaim. Approximately 60 midrange sites have been identified. However, the bill provides that the department will only reimburse claims to the extent that funding is available in the abandoned mine account. (Estimated total new abandoned mine funds available to DSL are \$503,500 in FY96 and \$603,500 in FY97.)
 15. Renewable resource grants will be reduced by \$1 million and will affect funding for 16 grants that have been approved by the House Appropriations Committee. A list of these grants is provided below. A reduction of \$1 million in reclamation and development grants will affect funding for 7 grants that have been approved by the House Appropriations Committee. A list of these grants is provided below. The reduced allocation to the renewable resource account will exasperate an already existing deficit in this account. Agencies including DNRC, Flathead Basin, Water Court, and NRIS/State Library are funded from this account. The loss of revenue amounts to \$1,628,378 over the biennium.

Affected Renewable Resource Grants:

City of Bozeman - Separator Waste Collection Facility	\$ 39,830
Flathead Basin Commission - Flathead Lake Watershed Management	100,000
DNRC - Flint Creek Return Flow Study	100,000
Butte-Silver Bow - Big Hole River Water Transmission Line	100,000
Montana Tech.-UM - Hydrologic Evaluation of Florence and Seeley Lake	95,422
Chouteau and Fergus Counties - PN Bridge	50,000
Libby Area Conservancy District - Libby, Granite, Cherry Creek Flood	35,000
DFWP - Assessment of Aquatic Resources in the Blackfoot Basin	100,000
Hysham, Town of - Sewer System Improvements	50,000
Fairview, Town of - Water System Improvements	100,000
Madison Conservation District - Willow Creek Water Management	25,000
Manhattan, Town of - Water System	50,000
Granite Conservation District - Upper Clark Fork Management Plan	64,740
Jackson Water and Sewer District - Geothermal Development	25,000
Sun River Water District - Water System	50,000
Lincoln, Lewis and Clark County - Sewer System	15,000

Affected Reclamation and Development Grants:

DHES - Nonpoint Source Pollution Control	\$ 54,932
Butte Silver Bow - Upper Clark Fork Basin Super Fund Tech. Asst.	93,622
DHES - Superfund GIS	95,200
Glacier County Conservation District - Red River Reclamation	150,000
Toole County - North Toole County Reclamation	295,246
Department of State Lands - Scobey Reclamation Site	11,000
Petroleum County CD - Artesian Basin Ground Water	300,000

(continued)

(continued)

16. The allocation for the interest earnings from the RIT to Renewable Resource grants and loans account allocation will be reduced from 36% to 16%.
17. Interest earnings from the RIT to the EQPF are increased from 6% to 16%.
18. An abandoned mine state special revenue account is created and allocated 10% of the RIT interest income.

FISCAL IMPACT:Expenditures:

	<u>FY96</u>	<u>FY97</u>
<u>House Bill No. 2:</u>	<u>Difference</u>	<u>Difference</u>
FTE	5.00	5.00
Personal Services (DHES)	179,523	179,523
Operating Expenses (DHES)	137,520	112,520
Operating Expenses (DSL)	503,500	603,500
Equipment (DHES)	10,000	0
Benefits and Claims (on EQPF)	<u>176,457</u>	<u>371,457</u>
Total	1,007,000	1,267,000

Funding:

General Fund (01)	1,007,000	847,000
State Special (02)	<u>0</u>	<u>420,000</u>
Total	1,007,000	1,267,000

House Bill No. 6 & 7

Grants	(2,000,000)
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Net Impact on General Fund Balance:

General Fund (Cost) (01)	(1,007,000)	(847,000)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties and municipalities that may be liable parties under the state Superfund law may have liability status changed. Whether their liability would increase or decrease would depend on the specific situation at each site. The reallocation of funds generated by interest on the RIT may affect the ability of local governments to receive grants or loans funded from RIT sources.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposed bill would substantially increase the amount of public funding required to clean up Superfund sites in the future. Continuing increased public liability for funding cleanups has been estimated at about \$1,800,000 per year for at least 10 years, based solely on the needs to address approximately 25 high-priority sites where the proposed bill would create an insolvent or orphan share. DHES did not estimate financial impact associated with the majority of the existing medium- and low-priority sites because of the limited existing information now available regarding cleanup costs and liability. In addition, DHES did not assume a financial impact associated with any sites that are presently unidentified. It is safe to assume that considerable additional public funding would be required to address the remaining sites over the next several decades.

The provision of the bill which limits expenditures for remediation in any given year to the additional EQPF revenue available will create a backlog of claims. These will be a liability for the state against future revenues, and may accrue interest from the time they are filed until they are settled.

(continued)

The legislation assigns a disproportionate workload for the AML program compared to the funding made available through the RIT interest income. The bill will result in all abandoned mines becoming the responsibility of DSL. The AML program can not effectively reclaim these sites with the available funding. The single highest prioritized site alone could require four to five years funding. Other individual sites could require the entire allocated amount annually. The top eighty sites may cost \$160 million which, given the proposed \$587,087 per year RIT funding, would take 200 years to reclaim.

TECHNICAL NOTES:

It is unclear how this act would function with the federal Surface Mine Control and Reclamation Act. The conditions attached to the use of RIT funds are different than conditions required by the Department of the Interior, Office of Surface Mining for the state to qualify for existing federal funds (approximately \$6 million annually).

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 17,
1995, at 12:30 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 365, SB 366, SB 373, SB 382, SB 406
Executive Action: SJR 15, SB 347, SB 349, SB 365, SB 373,
SB 386, SB 406

{Tape: 1; Side: A}

EXECUTIVE ACTION ON SJR 15

Motion: SEN. MIKE FOSTER MOVED AMENDMENT sjr001501.amc AS
CONTAINED IN EXHIBIT 1.

Discussion: CHAIRMAN LORENTS GROSFIELD explained the amendment
to the committee members.

Vote: MOTION PASSED UNANIMOUSLY.

spills if they thought there was a reasonable possibility that a spill might occur.

CHAIR. GROSFIELD said that Mr. North has described "capable of happening" in much the same way that he described "reasonable possibility". Supposing there was a gold mine that wants a permit and they state that they would not use cyanide, would it be considered that cyanide leaching was capable of happening or not? Mr. North responded no it would not be capable.

CHAIR. GROSFIELD said that on Page 1, Line 12, the bill says: "...not less than \$200 or more than \$2,500 for each acre of disturbed land..." Someone mentioned a \$32 million bond. That sounds like it would be a lot of acreage, or does that size bond likely result from the authority on Line 16 that says: "...the bond may not be less than the estimated costs..."? Mr. North said that is correct.

CHAIR. GROSFIELD said Mr. Jensen indicated that this bill would lead to litigation trying to figure out what the terms mean. He asked why there wasn't litigation now over that statement on Line 16. Mr. Jensen said the requirements of the bond were set at a level that reflects the actual cost of reclamation, which is the standard that is imposed. This bill would give the company additional basis for challenge of a bond because of the reclamation standards being imposed.

CHAIR. GROSFIELD said Mr. Clinch said that is essentially what was being done now. With or without that language he did not see that it would lead to the result Mr. Jensen was talking about. Mr. Jensen said they both have their legal view of the changes and they were not the same. The committee will have to decide whose legal opinion to trust.

Closing by Sponsor:

SEN. FOSTER said it was important to remember that the bill does not change any permitting requirements, and the department is comfortable to work with the wording. It was also important to keep common sense in mind and use the prudent person standard in making those determinations. He said he hoped the committee would support those reasonable clarifications.

HEARING ON SB 382

Opening Statement by Sponsor:

SEN. JOHN HARP, SD 42, Kalispell, said SB 382 was a bill that would change the Resource Indemnity Trust account. Twenty-one percent would go to the environmental quality protection fund, and \$.5 million for an emergency fund. He said there was concern about joint and several liability and the effects that had on one person's liability of picking up all the costs even though that person didn't contribute to the specific problem on that site.

The bill changes joint and several liability to a proportioned liability as identified in the bill.

The Voluntary Cleanup Act will give an incentive to improve the process of cleanup. Carol Browner, EPA Administrator, has made a comment that the reason that the Superfund Act was broke was because of delays and litigation over liability. This bill would take care of the joint and several liability problem and make the party responsible for the problem clean up the problem.

After they clean up a site they have to try to put the property back to its best use. This bill allows some flexibility to get the land back to what would be practicable, reasonable and economical. There were some concerns about the allocations of the RIT fund and the effective date, but the amendments in the draft grey bill that has been provided to the committee address that by making it effective in the next biennium.

Proponents' Testimony:

Leo Berry, Attorney for the Montana Mining Association, said he had been involved in the drafting of SB 382. The DHES was to be commended for working with them to make the bill as amenable as they could. There were three parts to the bill: 1) amendments to the Superfund Law, 2) a voluntary cleanup section, and 3) the Superfund portion relating to the strict joint and several liability and the cleanup standards.

Mr. Berry said a hypothetical example of how joint and several liability works would be if there was a car accident in front of the Capitol at 6th and Montana Ave., when cars driven by SEN. CRISMORE, SEN. TVEIT, SEN. CHRISTIAENS, AND SEN. BROOKE were coming to a stop. SEN. TVEIT ran into the back of SEN. CHRISTIAENS who ran into the back of SEN. CRISMORE who hit SEN. BROOKE out into the intersection and all the cars were dented. Two years later the Legislature passes a law that says they don't want any more dents in cars, they have to be fixed. The four Senators were told to fix those dents. SEN. CRISMORE, SEN. CHRISTIAENS, AND SEN. BROOKE said that SEN. TVEIT caused the accident by running into the back of them. Meanwhile, SEN. TVEIT has sold his car to SEN. GROSFIELD. SEN. GROSFIELD said he wasn't even there, he bought the car from SEN. TVEIT, and he shouldn't be liable. But the way the law works under joint and several liability all the parties are liable for fixing the dents. The Senators except for SEN. BROOKE say they don't have any money, so SEN. BROOKE gets to pay for fixing all the dents even though she wasn't liable. What this bill is trying to do is make sure that everyone pays the part that they were responsible for.

Under the bill, if a person was broke or couldn't be found, that person's share is referred to as an "orphan share." The "orphan

share" is paid for out of the fund set up from the RIT account. He asked the committee to support the bill with the amendments.

Frank Crowley, Attorney, representing ASARCO and the Butte Mining Company, said that joint and several liability goes against human nature. A way to fix part of that is to make liability proportionate and the rest can be fixed by having a fund to respond to the "orphan shares." There was unanimous agreement in the country that the federal Superfund program is broke. The Clinton Administration and the EPA were working for change. He referred to "The White House Bulletin" dated February 17, 1995, which was a press release in which the EPA said there will be "greater use of mixed funding for which the Government pays for non-viable party (cleanup) shares at certain pilot sites." EXHIBIT 12.

He said it was time to take the state Superfund program and make it work. He thanked DHES Director Bob Robinson and his staff for all the time spent on the bill. He urged the committee to support the bill and the amendments.

John Davis, representing the Atlantic Richfield Company, said he wanted to address the cleanup sections that appear on Pages 28 and 29 of the grey bill. There has to be some relationship between the benefits received from the environmental cleanup and the costs of resources that will go into that. In Section 2 of the bill they have tried to refocus what the considerations were in the selection of remedial actions by eliminating certain preferences that were in the statutes.

Jay Sprekelmeyer, Superfund Manager ASARCO, said the Superfund Act is wasteful. The time and money spent do not solve the problem. This bill will allow their efforts to be focused on appropriate cost effective remedies. An example is the soil cleanup in East Helena by ASARCO to reduce the risk to human health. The soil removal was mandated when lead levels were above a certain level. The company had been trying to reduce the lead level by soil tilling. This bill would allow efficiency in the remedy selection by incorporating corresponding risk reduction with the associated costs. He said he was optimistic that the amendments to the bill could be worked out with the DHES.

Fess Foster, Golden Sunlight Mine, Whitehall, said SB 382 was complicated but an important piece of legislation. The State Superfund law was modeled after the Federal Superfund Act. They were having problems on the federal level as well as the state Act. The bill will rectify many of those concerns.

{Tape: 3; Side: A}

He said currently they cannot clean up sites that they do not own without assuming liability. He suggested that SB 382 be amended to allow them to voluntarily clean up sites they do not own at their expense without incurring environmental liability.

Jerome Anderson, representing Shell West Production Company, said the bill was very technical, but they wholeheartedly support the bill.

Allen Barkley, representing Columbia Falls Aluminum Company, said they strongly support the concept of the bill and urge its passage.

Opponents' Testimony:

Bob Robinson, Director, Department of Health and Environmental Sciences, said the department has worked with the people supporting the bill, in the past 2 weeks. One of the reasons for the department to become involved was damage control. The bill would be a significant change in public policy and how cleanup was approached. A number of changes were directed to move the state Superfund Act more towards the Federal Superfund Act. He said there has been testimony that the Federal Superfund was broke and bound up in litigation. That was not the case with the state Superfund Act, because of the joint and several liability. Each and every one of the sites don't have to be litigated.

Mr. Robinson said another problem in the bill is lowering the protective health standards that exist in the current state Superfund Act. He urged the committee to review the written testimony in: EXHIBIT 13, "Comparison of Estimated State Costs Related to Orphan Share/Insolvent Share"; EXHIBIT 14, "Alternative revisions to cleanup standards"; and EXHIBIT 15.

Mr. Robinson said the RIT fund has been diverted and squirreled away in various grant programs over the years and was not doing what it was initially intended to do.

Mr. Robinson said that in 1985 SEN. HARP said relative to joint and several liability, that it was better to find some way for cleanup and worry a little bit less about who was responsible. It's important to remember that even after joint and several liability takes over and someone cleans it up, the opportunity is there for the person who cleaned it up to go back to the responsible parties, if they can find them, and assess some share of the cost.

Mark Simonich, Director, Department of Natural Resources and Conservation, said SEN. HARP indicated that he understood that the DHES had some concerns about the bill and that the amendments would address those concerns. There also were concerns with the fiscal impact to the 1997 biennium with the changes that would be made with reallocation of funds. Over the years there had been a

great tendency to depend more and more on the RIT and the diversion of that fund to pay for general operations in state government. Many agencies have become dependent upon those funds to the point that about \$14 million goes into funding agency budgets. Governor Racicot put some of the general fund monies back in.

Mr. Simonich said that the renewable resource grant and loan programs were guaranteed \$2 million for the biennium, plus \$3 million for the reclamation and development grants program. The department has never been able to put enough money into reclamation because of the liability problem. If the Legislature can figure out a way to correct the liability problem for the state arising from spending that money, they will be able to funnel more money into reclamation through the reclamation and development grants program. There should be some language change to that grant program because money had been siphoned off for other nonreclamation types of grants. He said SEN. HARP'S amendments would satisfy the DNRC.

Chris Tweeten, Chief Deputy Attorney General, said he was appearing on behalf of Attorney General Joe Mazurek and the Department of Justice. He said they became interested in June when the Governor transferred the Natural Resource Damage Program from the DHES to the Department of Justice. They share the concerns of Bob Robinson with respect to the proposed legislation. As the bill was introduced it would have cut off Montana's claim against ARCO for damages under the state Superfund Law for the cleanup of the Clark Fork Basin. They understood there was an amendment in the grey bill that would correct that problem.

Mr. Tweeten said they oppose the bill for much of the same reasons that had been addressed by the DHES. When they appeared before the Appropriations Committee and presented the budget for the continuation of the litigation against ARCO for the Clark Fork damage case, Arco urged the Legislature to throw in the towel on that litigation and not fund the litigation for the next biennium. One of their arguments was there was too much money spent on litigation and not enough on cleanup.

Mike Volesky, Executive Director, Montana Association of Conservation Districts, said they oppose the bill in its original form because of the grant and loan program that repairs environmental damage of Montana's natural resources. The renewable resource grant and loan program and the reclamation and development grants program amount to \$2 million and \$3 million respectively. The bill would decrease those amounts and conservation districts would oppose that. The amendments that were offered would address their concerns about the reallocation of the RIT funds. If the amendments were adopted they would not oppose the bill.

Ann Hedges, representing the Montana Environmental Information Center, said the 10% of the interest income from the RIT fund allocated for reclamation of abandoned mines that was in the original bill, was reduced to 5% in the grey bill. She said in the original bill where it talks about the approval of voluntary action plans, no one disagrees with the concept of that, but in the bill the state only has 60 days to review a voluntary action plan, and they probably could not adequately analyze the problems in just 60 days. The failure of a property to comply with the plan renders the plan void. There should be some kind of enforcement mechanism. The other language that was of concern was that the submission of misleading information renders the plan void, but there is no enforcement against anyone for that activity.

Florence Orr, Northern Plains Resource Council, said it was unfair for amendments to come in that they have not had a chance to see.

Jim Emerson, private citizen, said his problem with the bill was that the taxpayers shouldn't be burdened with that. Companies should be paying enough higher taxes that the private citizen doesn't have to pay for fixing the problem. The people that were taking over abandoned facilities like ARCO in Butte, didn't take them over just to clean them up, they expected to make a big profit.

Peter Nielsen, Environmental Health Supervisor, Missoula County Health Department, submitted written testimony. EXHIBIT 16.

Questions From Committee Members and Responses:

SEN. BROOKE asked **Mr. Tweeten** if there was a case pending, would it be exempt under the new standards. He responded that any claim that was ongoing would be exempt from the bill.

SEN. BROOKE asked if he thought that if a judge looked at an outstanding claim, would it go forward. **Mr. Tweeten** answered that the judge would determine what the intention of the Legislature was with respect to the bill's applicability. He thought the court would have a hard time applying the changes that were in the bill.

CHAIR. GROSFIELD said to **Mr. Davis**, "you are here representing ARCO and you have seen the applicability language." **Mr. Davis** said that was correct. **CHAIR. GROSFIELD** asked if his understanding of that language in the bill was that this bill would not apply to any currently ongoing legislation. **Mr. Davis** replied yes.

SEN. CHRISTIAENS asked **SEN. HARP** if there was a fiscal note with the bill. He said not the way it was amended. There wouldn't be

a fiscal note until they work with DHES and DNRC. **SEN. CHRISTIAENS** said that **Mr. Robinson** said the claims would out-strip the earnings. He asked **SEN. HARP** if he agreed with that. He answered that the bill says they can only appropriate what the Legislature would grant. If the money was not there the "orphan cases" would have to wait for a period of time. They could not appropriate any more dollars than what would be available.

SEN. CHRISTIAENS asked **Mr. Simonich** if the money appropriated for the grant and loan programs would be near the same amount. He answered that the \$5 million was for two programs: the renewable resource program gets \$2 million and the reclamation grant program gets \$3 million. He said the bill as introduced would reduce each of those by \$1 million. But the amendments that were proposed would not change the \$5 million appropriation.

SEN. CHRISTIAENS asked **Mr. Simonich** to comment on whether, if the appropriations subcommittee replaced the RIT with general fund in the department's budget for the biennium, that is, if the subcommittee agreed with the Governor to backfill with general fund, since the department was funded with 30% of RIT funds did **Mr. Simonich** think that 30% would continue to be made up from the general fund in the next Legislature. **Mr. Simonich** said they cannot keep relying on RIT because there just wouldn't be enough money, not just for the DNRC, but for a variety of agencies that go through different appropriations subcommittees.

SEN. CHRISTIAENS asked **Mr. Robinson** how many additional FTE's they would need with their additional duties and the approximate cost. He said (referring to the chart in **EXHIBIT 14**) the \$292,043 would reflect 5 FTE's and the \$235,384 would reflect 4 FTE's.

SEN. KEATING said he didn't understand how the bill would be financed. On the first page of the grey bill there were temporary expenditures of the RIT funds that says that would be effective July 1, 1995. So beginning July 1, 1995 there was 21% of the interest income going to the Environmental Quality Protection Fund. **Mr. Berry** said that is an error in the grey bill and it should be effective July 1, 1997. **SEN. KEATING** said in that case, they would continue appropriating the RIT interest until July, 1997.

{Tape: 3; Side: B}

SEN. KEATING said the changes that were being proposed deal with the interest income to the Hazardous Waste account and the Environmental Quality Protection Account. **Mr. Robinson** said the chart shows the anticipated increased expenses of \$5,754,543 with the introduced bill and \$6,547,884 with the amendments. **EXHIBIT 14**. He said with the additional claims they would end up with a negative balance. They anticipate a decrease in cost recovery because they cannot recover from the "orphan share."

CHAIR. GROSFIELD asked **Mr. Berry** if his understanding of the applicability section of the bill was that the bill would not affect any current litigation. **Mr. Berry** responded that that is correct, the language was drafted by the Department of Justice so that the bill would not affect current litigation. **CHAIR.**

GROSFIELD asked **Mr. Berry** to respond to the question that if the grey bill was passed, would it lead to an increase in litigation. **Mr. Berry** said it would be speculative whether or not it would. The reason for a lot of litigation on the federal side is because people think they were being treated unfairly. There would be circumstances toward the end of the process when people can't agree on what share should go to the "orphan share", and end up with some litigation. They tried to minimize that by not allowing recovery of legal fees from the fund.

CHAIR. GROSFIELD asked if the voluntary cleanup was kind of a good samaritan thing where someone could clean something up and not end up with a large liability. **Mr. Berry** said that is correct, and Golden Sunlight Mine actually would go off their property for cleanup if they were not stuck with a liability. **SEN. GROSFIELD** asked if the Environmental Quality Protection Fund would reimburse all of those voluntary cleanups. **Mr. Berry** replied yes if there were an "orphan share" and no one to collect from. **CHAIR. GROSFIELD** asked if the site wasn't cleaned up properly, what would the liability be. **Mr. Berry** said they have to submit a plan to the department addressing the problem, and implement the plan in accordance with the department's direction. If a problem comes up after the clean up, then the department can require that the new problem be cleaned up, but if the volunteer party did not cause the problem they were not liable. The \$1 million reserve is for additional problems that may occur.

CHAIR. GROSFIELD said some of the opponents were concerned about the voluntary approach. One of the concerns was that the department had only 60 days to review a voluntary proposal, and that there may not be enforcement to carry it out. **Mr. Berry** said if it wasn't carried out within 24 months, the plan lapses. The department retains the authority to order that something be done through the regular Superfund process. The voluntary cleanup provisions were taken from a Colorado law that had been successful. Their review period was only 30 or 40 days. **Carol Fox, State Superfund Program**, said in their amendment they struck the provision that referred to the 60 days.

CHAIR. GROSFIELD said the bill was very complex and very significant and was wondering if they could put the bill on the list of bills that wouldn't have to make the transmittal deadline. **SEN. HARP** said he wanted to make sure they had time to obtain a fiscal note and to give the public the proper time to review the bill. He suggested as that Majority Leader, he would talk to the House leadership and that the bill should stay in the Senate Natural Resources Committee.

SEN. HARP said there was a list of both House and Senate bills that leadership of both houses would agree to delay without having to suspend the rules for transmittal deadlines. He said he didn't want anything going to the floor that wasn't in proper form.

Closing by Sponsor:

SEN. HARP said a lot of the opposition to the bill was to the original draft. By holding the bill until after transmittal it will help the process. He said he did carry the bill in 1989 and it had joint and several liability in it, but he knows when he makes a mistake. With the work of the committee the legislation can be improved upon. The main purpose of the bill is to clean up sites. The orphan accounts could wait for those appropriations, recognizing that what would be appropriated could be spent. He was surprised that the Department of Justice opposed the bill based on ARCO, because that has nothing to do with the bill because that litigation is already in place.

SEN. BROOKE said she wanted to analyze the bill in its completed form so that they could agree on it.

SEN. KEATING said if SEN. HARP can get the bill on the list with the House, could the committee get a grey bill that had all the amendments in it with a couple of flow charts, so they know what people would be talking about, and a fiscal note.

CHAIR. GROSFIELD said there were several mistakes in the draft grey bill, and it would help to have an accurate grey bill.

EXECUTIVE ACTION ON SB 406

Motion/Vote: SEN. WELDON MOVED DO PASS SB 406. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 386

Motion: SEN. COLE MOVED TO ADOPT AMENDMENTS NO. sb038601.amk AS CONTAINED IN EXHIBIT 17.

Discussion: Mr. Everts said basically the amendments allow for the voluntary compliance with the Underground Storage Tank Act. It provides that a tank that is installed after the effective date of the Act shall not be eligible for reimbursement under the Petroleum Storage Cleanup Fund. The amendments also provides a termination date of December 31, 1995.

SEN. BROOKE asked Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, DHES, if she supported the amendments. She replied that the concern with the amendments and the bill was that the tanks above ground were covered by the

SB 382

Testimony of Department of Health and Environmental Sciences
Bob Robinson, Director

DHES opposes SB 382.

SB 382 is more than mere substantive amendments to the state superfund law. It constitutes significant change in public policy concerning responsibility for pollution and cleanup and shifts a significant portion of the cleanup cost to the state.

Summary

A number of the changes proposed in this bill, even as amended, would change the State's current effective cleanup program into one that is bogged down in legal fees and transaction costs. With these changes, you will see people coming in here in two years seeking repeal of the entire program because it will be so ineffective and wasteful.

These proposals are primarily an attempt to shift costs from responsible parties to the state Environmental Quality Protection Fund. The ability to do this is completely dependent on increasing the revenue into the fund from the RIT. But the amount proposed to be reallocated to the EQPF falls far short of what will actually be needed to pay the costs which would be shifted to the fund under this proposal.

While I can't represent to you that the liability scheme currently in place is absolutely fair in all instances, I can tell you that given the limited resources of the state, it is absolutely necessary for an effective and efficient cleanup program. This administration supports the current liability scheme as a valid policy choice in order to obtain expeditious cleanup of contaminated sites.

ANALYSISLiability Scheme:

The draft legislation, even with the amendments offered by the proponents, significantly changes the CECRA liability scheme by:

- (1) eliminating "joint and several" liability and replacing it with a "proportionate" liability standard,
- (2) eliminating liability for most "current owners and operators," and
- (3) adding an affirmative conduct requirement to the definition of "disposal."

These changes create several problems:

- Proportionate liability, limiting current owner liability, and the affirmative act requirement go much further in limiting liability than the present federal law.
- These changes would significantly reduce:
 - the department's ability to require parties to clean up contaminated sites, and
 - the department's ability to recover the cost of cleaning up contaminated sites from liable parties.
- "Proportionate liability" is not a standard that is clearly defined or developed in the law. "Affirmative act" is an ambiguous standard compared to the strict liability in the current law. This lack of clarity would lead to wasteful litigation and ineffective enforcement of the statute.
- Each of these changes would increase litigation between the department and responsible parties, both to establish liability and to apportion liability. This would draw the resources of all the parties away from cleanup.
- Limiting owner/operator liability and adding an affirmative act requirement would severely restrict the ability of the Underground Storage Tank Program to use CECRA as a cost recovery mechanism. Without that mechanism, the program's authorization would be in jeopardy.
- Adopting standards of liability that fall far short of the comparable federal standards would also limit the Department's ability to obtain the lead role at federal Superfund sites in the future.

Orphan Share Funding

These changes in the liability scheme under CECRA will substantially increase the number of what are known as "orphan shares" at sites. "Orphan shares" are those parts of the total responsibility for the cost of cleanup at a site for which there is not any party that can be found to seek reimbursement from.

After guaranteeing a significant increase in the number of orphan shares at sites, this legislation, even as amended, makes the state liable for all orphan shares, and even makes the state pay for those parties that are simply unable to pay for their part of the cleanup. A conservative estimate of the fiscal impact to the state is in the range of \$ 5 million per year and may total \$50,000,000 over ten years. Under this framework:

- The department is required to approve filed claims for reimbursement and these claims accumulate over time, accrue interest, and carry over without limit to successive fiscal years. Given the proposed allocation to the EQPF, accrual of interest on the claims would exceed annual revenue after four years.
- Litigation by the Department will be increased, primarily to defend its decisions on filed claims for reimbursement and to defend the interests of the state through representation of an orphan share or party that is unable to pay.
- A new responsibility is placed on the department to review and evaluate validity and reasonableness of costs submitted for reimbursement.

Cleanup Standards

The legislation also replaces the requirements that currently govern cleanup activities with standards that diminish the importance of protecting public health and the environment, and limits the ability of the department to take measures necessary to protect the public from future health and environmental threats at a site. These changes:

- eliminate the statute's primary goal of protecting public health and the environment,
- offset the need for protection of the public health and environment directly against cost, instead of requiring cost to be considered among alternatives that all protect public health,
- could require the Department to choose a cleanup option for a site that violates substantive environmental laws and standards, including both state and federal requirements,
- are unclear and will result in litigation.

DEPARTMENT PROPOSALS:

Voluntary Cleanup Program

The department has considered what constructive steps can be taken to create a cleanup program that works faster and is more efficient. We have proposed an act for a voluntary cleanup program that will allow voluntary cleanups to be conducted with minimal department oversight and restriction. This program would allow private parties more control over their cleanup activities. Yet, they could still receive the department's acknowledgement that they have accomplished cleanup goals, so that property transfers are not restricted.

Cleanup Standards

In addition, the Department has proposed changes to the criteria considered for selection of remedies to allow more flexibility in choosing remedies and to allow greater consideration of the relative costs and benefits of available alternatives. You have heard about the need for reasonable cost/benefit analysis in making sound remedy selection decisions. The department's proposal for the remedy selection section of CECRA will allow the department to conduct this type of analysis in making remedy selection decisions.

Both of these proposals by the department represent sound and predictable improvements to the cleanup law. The department encourages you to adopt our proposed Voluntary Cleanup Act Proposal and remedy selection revisions for Section 721 of CECRA and to strike the rest of the bill.

Assumptions Used to Estimate Claims on Fund**

** Interest for claims on the EQPF is not included in these estimates

Past CECRA Sites (SB382 as introduced)

Twenty (20) sites. Total estimated cleanup cost of \$9,650,000. Estimated orphan share/insolvent share reimbursement cost of \$5,300,000. All claims filed in two-year biennium at \$2,650,000 per year. (Source: DHES)

Future CECRA Sites (SB382 as introduced and as amended)

Twenty-six (26) high-priority sites. No abandoned mine sites included. Total estimated cleanup cost of \$29,900,000. Estimated orphan share/insolvent share cost of \$18,000,000. Claims estimated to occur evenly over a 10-year period at \$1,800,000 per year. (Source: DHES)

Abandoned Mine Sites (SB382 as amended)

Twenty (20) high-priority sites exist that will cost from \$5,000,000 - \$10,000,000 each to reclaim. (Source: DSL) Most of these sites have some responsible parties, and they would be addressed under CECRA authorities. To address 10 sites in 10 years would require a minimum estimated total cost of \$50,000,000. Estimated 50% orphan share/insolvent share cost of \$25,000,000 distributed evenly over 10 years at \$2,500,000 per year. (Source: DHES)

Sixty (60) mid-range sites exist that will cost approximately \$1,000,000 each to reclaim. (Source: DSL) Many of these sites have responsible parties or mixed liability, and they would be addressed under CECRA authorities. To address 20 sites in 10 years would require a minimum estimated total cost of \$20,000,000. Estimated 50% orphan share/insolvent share cost of \$10,000,000 distributed evenly over 10 years at \$1,000,000 per year. (Source: DHES)

Storage Tank Sites (SB382 as introduced and as amended)

Approximately 10,000 active underground storage tanks exist in Montana. Leaks from these tanks are reported at a rate of approximately one per day. Under the revised bill, the cleanup of some of these leaking tanks would be eligible for reimbursement from the EQPF. Forty-five (45) cleanups per biennium are estimated to be ineligible for reimbursement from the Petroleum Tank Release Compensation Fund, but would be eligible for reimbursement from the EQPF under the proposed bill. Cleanup costs average \$45,000 per site, for a total estimated cost of \$2,025,500 per biennium, or \$1,012,500 per year. (Source: DHES)

**Comparison of Estimated State Costs Related to Orphan Share/Insolvent Share
Funding Under Proportionate Liability**

(Introduced and Amended Versions)

Annually
(in dollars)

	Current Law	SB 382 As Introduced	SB 382 As Amended
Additional Revenue			
EQPF	0	647,000	1,332,500
Cost Recovery	<u>0</u>	<u>(105,000)</u>	<u>(105,000)</u>
TOTAL ADD'L REVENUE	0	542,000	1,227,500
Additional Expenses			
DHES Program Costs	0	292,043	235,384
<u>Claims on EQPF</u>			
Past CECRA Sites	0	2,650,000	0
Future CECRA Sites	0	1,800,000	1,800,000
Abandoned Mine Sites	0	0	3,500,000
Storage Tanks Sites	<u>0</u>	<u>1,012,500</u>	<u>1,012,500</u>
TOTAL ADD'L EXPENSES	0	5,754,543	6,547,884
BALANCE (Revenue less Expenses)	0	(5,212,543)	(5,320,384)

Alternative revisions to cleanup standards:

Section 75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.

(1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) ~~shall may consider and may require cleanup consistent with~~ substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment, considering present and reasonably anticipated future land uses, and that:

(i) ~~use permanent solutions~~ are effective and reliable in the short-term and the long-term;

(ii) are technically practicable and implementable;

(iii) ~~use alternative treatment technologies or resource recovery technologies to the maximum extent where~~ practicable, considering alternatives for institutional and engineering controls; and

(~~iii~~iv) are cost-effective, taking into account the total short-term and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required. Cost effectiveness shall be determined through an analysis of the incremental costs and incremental benefits of alternatives considered.

(3) In selecting remedial actions the department shall also consider the acceptability of the actions to the affected community, as indicated by community members and the local government.

(4) The department may select a remedial action that does not meet an applicable state environmental requirement, criterion, or limitation under any of the following circumstances:

(a) The remedial action is an interim measure and will become part of a total remedial action that will attain the requirement,

MISSOULA
COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

301 W ALDER ST

MISSOULA MT 59802-4123

(406) 523-4755

SENATE NATURAL RESOURCES

EXHIBIT NO. 16Missoula Valley Water Quality District 2-17-95BILL NO. SB-382

February 16, 1995

Senator Lorents Grosfield, Chair
Senate Natural Resources Committee
Montana Senate
Helena MT

RE: Senate Bill 382

Post-it* Fax Note	7671	Date	<u>2-17</u>	# of pages	<u>6</u>
To	<u>Vivian Brooke</u>	From	<u>Peter Nielsen</u>		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	<u>444-7873</u>	Fax #			

Dear Senator Grosfield,

We are unable to attend today's hearing on Senate Bill 382, but wish to offer the following comments.

Missoula Valley residents obtain their water from a sole source aquifer. Several facilities have affected the quality of our aquifer through releases of toxic substances. These include sites which are currently being cleaned up through the state CECRA program, where industrial chemicals such as pentachlorophenol, heavy metals, insecticides and other substances have been released to groundwater. As such, we are gravely concerned about the proposed amendments to CECRA law suggested in Senate Bill 382. We urge you to resist ill-founded attempts to weaken CECRA or to shift the costs of cleanup and state regulatory oversight from those that cause pollution to Montana citizens.

Senate Bill 382 is a complicated bill, but our understanding of it is made much more difficult by the numerous proposed amendments which have been suggested recently. We have only had a brief opportunity to review these proposed amendments this morning, and doubt that other Montana citizens are aware of their nature. For this reason, I suggest that your committee rehear this bill to enable our department and Montana citizens an opportunity to comment on the legislation which is actually proposed for adoption.

We are alarmed by the proposal in Section 5 to exempt those who purchased property prior to July 1, 1989 from liability and to eliminate the concept of joint and several liability. These changes would shield virtually every facility which has caused pollution of our aquifer from liability under this statute. This is clearly unacceptable, and we urge you in the strongest possible terms to delete these proposed amendments.

We are also extremely concerned with the proposed changes which would seriously weaken the standards to which a site must be cleaned up. These are proposed in Section 6. The version of SB382 which we have reviewed would eliminate the need to provide both present and future protection of human health and the environment. It would also require that the costs of cleanup be "reasonable related to" the benefits. This sounds nice in theory, but in effect it means that if

ADMINISTRATION
(406) 523-4770

ANIMAL CONTROL
(406) 721-7576

ENVIRONMENTAL HEALTH
(406) 523-4755

HEALTH EDUCATION
(406) 523-4775

HEALTH SERVICES
(406) 523-4750

NUTRITION SERVICES
(406) 523-4740

PARTNERSHIP HEALTH CENTER
(406) 523-4769

WATER QUALITY DISTRICT
(406) 523-4890

EXHIBIT NO. 16

DATE 2-17-95

BILL NO. 33-382

a cleanup costs more than the public benefits, the cleanup may not be required - and that means that the cost is simply shifted to the public - you and me. I don't believe that Montanans agree that they should pay the cost of cleaning up toxic waste sites. Certainly the costs of cleanup are high - this should provide industry with ample incentive to prevent future contamination. If we relieve them of the requirement to pay for effective cleanup, we have eliminated all incentive to prevent future pollution.

In a similar vein Section 6 makes radical changes in the criteria for determining degree of cleanup. It would eliminate the need to meet state and federal requirements. Instead of doing this, we suggest that you add a requirement to meet local standards for cleanup, where they have been adopted by Montana citizens through their local governments. The proposal included in SB 382 is contrary to the notion of state and local rights.

The proposed amendments also would delete the requirement that a cleanup use permanent solutions. This is a short-sighted suggestion which will only serve to transfer the costs of cleanup from those who caused the pollution to future generations of Montanans.

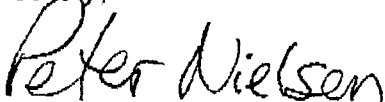
Section 6 would also require that any current land uses be considered in establishing the degree of cleanup required. This is also incredibly short-sighted because it forbids consideration of a community's long-term goals, and takes away our right of self-determination.

Section 7 would eliminate the requirement that polluters pay the state's cost of overseeing cleanup. Not only will this transfer the costs of this task to innocent Montanans, but it will also effectively limit the state's capability to get work done on cleanup sites because it will not have the budget to do so.

We have only briefly reviewed the recent drafts of language pertaining to a voluntary cleanup program. While we agree that a voluntary cleanup program is desirable, we must emphasize the importance of building in adequate safeguards to protect the public interest and to prevent abuse of such a system. The Department must have the ability to proceed with cleanup under administrative orders instead of voluntary cleanup plans, and the public must have an opportunity to be informed and involved in decisions.

Please consider tabling this bill, or rehearing it to allow public comment on the legislation which may be sent to the Senate for consideration. Thank you for considering these comments.

Sincerely,



Peter Nielsen
Environmental Health Supervisor

cc: Senator Jeff Weldon
Senator Vivan Brooke

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on March 15, 1995,
at 3:30 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Mickhael Kakuk, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 472, HB 473,
Executive Action: SB 382

{Tape: 1; Side: B;}

HEARING ON HB 472

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, House District 93, Winifred, presented
HB 472. He handed out printed material, EXHIBIT 1. SB 346,
which was tabled last session, called for the sale of water for

REPRESENTATIVE KNOX stated this bill establishes accountability for the planners. Section 4 is commonly used procedure. The goal of Section 5 is to place a greater degree of control at the local level. **SENATOR WELDON** had a concern that Section 5 would bypass the review process for minor subdivisions. However, there is a great deal of comprehensive criteria which has been formulated to fit local needs for any local governing body in the state of Montana. There is no question that there can and will be review of minor subdivisions. On the mitigation portion, substantial credible evidence is a common legal standard which has been used in over 800 cases statewide.

Mr. Morris stated that Section 3 was not needed because a gift is already covered. A gift to an immediate family member is covered but this is inadequate for agricultural estate planning. Only the first minor of a subdivision is excluded. **Mr. Morris** also stated that Section 10 was not needed because many district court cases state that there is the option of appeal. The Supreme Court is final and they have decided in Sourdough, "The legislature did not provide an appeal process under this act or cases involved in decisions of conditional approval of preliminary plats, accordingly this court will not fabricate one." He rejected the comments that this is an unfunded mandate. There will be some additional costs to local governments; however, it will not be excessive.

Susan Abell stated a legitimate problem. He has prepared an amendment which he will give to the committee addressing the problem. A statement had been made that maintenance of parks would be an unfunded mandate. He felt this was a stretch of logic. The fair market value could be decided by appraisers using recent sale price of like property. HB 473 adds the protection of the rights of property owners to the statement of purpose. It allows a gift of lands which allows the landowner to mitigate the impact of gift and estate taxes on the next generation. It improves bonding provisions and places in statute commonly used incremental bonding practices. It will give local governments greater flexibility to establish rules for minor subdivisions. It improves mitigation procedures. It allows money dedicated for parks to be used for maintenance thus addressing the statewide problem of neglected, weed infested parks. HB 473 addresses the problems created by a Supreme Court decision in reference to appeals.

EXECUTIVE ACTION ON SB 382

Motion: **SENATOR KEATING** MOVED TO AMEND SB 382.

Discussion: **Leo Berry** explained the amendments to the committee members, as contained in **EXHIBIT 30**

Bob Robinson, Director of Montana Department of Health and Environmental Sciences, presented a summary of fiscal concerns.

EXHIBIT 31. He stated **Mr. Berry** was very fair in explaining the concerns which the Department has. The Department has worked with **Mr. Berry's** office and the other proponents to the bill; however, this is still a situation of damage control from the perspective of the Department because some of the language in the original bill has a much greater affect on the program than he believes the proponents anticipated.

SENATOR CHRISTIAENS stated that **Mr. Berry** indicated that there were some additional negotiations going on. He questioned going ahead with executive action when there are negotiations still in place which may substantially change the bill.

Mr. Robinson stated the amendments they presented earlier speak to cleanup standards and voluntary cleanup. A lot of the language was incorporated into the Grey Bill. The Department still stands behind the intent on the rest of the amendments which basically struck the rest of the bill with the exception of the voluntary cleanup and cleanup standards.

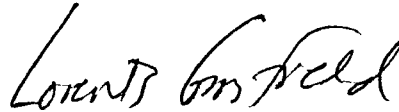
CHAIRMAN GROSFIELD stated that due to the late hour, the length of the amendments, and the ongoing negotiations regarding this bill, he would prefer to defer any Executive Action until March 17th.

SENATOR KEATING withdrew his motion.

{Comments: this meeting was recorded on 3, 2 hour tapes.}

ADJOURNMENT

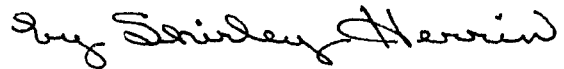
Adjournment: 7:30 PM



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary



LG/TR

1.

DATE _____

SEN

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SUMMARY OF FISCAL CONCERNS WITH SB382, AS AMENDED 3/10/95

provided by Bob Robinson, Director
Montana Department of Health and Environmental Sciences (DHES)
March 15, 1995

The Department's concerns regarding the fiscal aspects of SB 382, as amended by the sponsors 3/10/95, are as follows:

- **The proposed increase in funding for the EQPF is not adequate to pay anticipated orphan/insolvent share claims on the fund in a timely manner.** DHES estimates that over the next 10 years approximately \$48,000,000 in valid claims on the EQPF may accumulate that cannot be paid. Additional revenue will have to be raised if parties with valid cost reimbursement claims under the revised CECRA liability formula are to be compensated.
- **To make the proposed orphan/insolvent share liability method work, funding for the State's cost liability needs to be made both adequate and certain in the long term.** The proposed changes to the liability provisions of CECRA would establish certain and long-term orphan/insolvent share liability to the State. To be successful, this approach is dependent on establishing an adequate fund to pay the State's share. However, in addition to being inadequate in amount, the proposed RIT interest funding mechanism is uncertain in the long term. Allocation of the RIT interest is subject to possible modifications during each legislative session that result from various interests competing for limited RIT-interest funding, but having no stake in CECRA liability, cleanup, and funding issues.
- **The changes in liability provisions would require DHES to expand its CECRA program to handle the increased litigation, cost allocation, and claim reimbursement burden.** Under the present joint and several liability method there is essentially no litigation involving the State. In contrast, under the proposed bill's proportionate liability method, almost all determinations of proportionate liability would be made in court and the State would have to be actively involved in that litigation to represent and protect the financial interest of the State stemming from orphan and insolvent shares. To handle the increased litigation burden, DHES has estimated that the CECRA program would have to be expanded by 4 FTE (2 attorneys and 2 paralegals) at an additional cost of approximately \$235,000 per year. In addition to increased litigation burden, DHES also would be required to evaluate the reasonableness of reimbursement claims made on the EQPF. Although the fiscal note on SB 382 as introduced did not consider additional staffing needs for claim review and payment, DHES' experience in evaluating claims under the Petroleum Release Compensation Fund indicates that considerable engineering and accounting review is necessary to ascertain cost reasonableness and approve claims. None of the additional DHES expense would be related to actually cleaning up sites, but rather to litigation, cost allocation, and claim payment.

- Although the liability provisions of CECRA would be changed during the FY97 biennium to assign substantial orphan/insolvent share liability to the State, no additional funding to cover the increased State liability would be provided until the FY99 biennium.

Details describing the Department's estimates of costs associated with SB 382 have been included in the SB 382 (as introduced) fiscal note and in testimony provided to the Committee by Bob Robinson on February 17, 1995. A summary of those estimates, including revisions incorporating provisions of the 3/10/95 amendments, is provided below:

Over the next 10-year period, the Department estimates that claims may amount to the following total:

90%
\$16,200,000 - 26 of 51 high-priority non-mining sites
\$22,500,000 - 10 of 20 high-priority abandoned mine sites
\$ 9,000,000 - 20 of 60 medium-priority abandoned mine sites
\$ 9,000,000 - 225 storage tank cleanups not eligible for Petro Fund
\$56,700,000

Specific details of these cost estimates are provided in the attached table, which includes supporting assumptions. Estimated claims on the EQPF provided above and in the table have been reduced to 90 percent of the expected total orphan/insolvent liability share at affected sites, consistent with the provisions of the 3/10/95 amendments.

Over the same 10-year period, the Department estimates that funding in the EQPF (allocated from 21 percent of the RIT interest) available to reimburse orphan/insolvent share claims will total approximately \$8,000,000. This will leave a shortfall of about \$48,000,000 in claims that will not be paid or will have to be paid from other funding sources if applicants were to successfully litigate to receive their approved reimbursement.

The DHES estimates above assume that the 30 high- and medium-priority abandoned mine sites have mixed ownership and only partial orphan/insolvent shares, so they will be addressed by DHES or have claims made against the EQPF. Under the bill, additional funding of \$3,100,000 over the same 10-year period would be provided to the Department of State Lands to supplement its abandoned mine reclamation work. It is assumed that those funds would be used on total orphan share sites addressed by DSL, which are a portion of the 280 abandoned mine sites inventoried by DSL.

The DHES figures above **do not include interest on unpaid claims**. It is uncertain if interest would accrue to the claims approved but awaiting payment. If interest is allowed to accrue, interest alone would probably consume all EQPF revenues after about 6 years of unpaid claims had accumulated.

SB 382

Comparison of Estimated State Costs Related to Orphan Share/Insolvent Share
 Funding Under Proportionate Liability

(Introduced and Amended Versions)

Annually
 (in dollars)

	Cur- rent Law	SB 382 As Introduced	SB 382 As Amended *	
			During FY97 Bien.	After FY97 Bien.
Additional Revenue				
EQPF	0	647,000	0	1,332,500
Cost Recovery	0	(105,000)	(105,000)	(105,000)
TOTAL ADD'L REVENUE	0	542,000	(105,000)	1,227,500
Additional Expenses				
DHES Program Costs	0	292,043	235,384	235,384
<u>Claims on EQPF**</u>				
Past CECRA Sites	0	2,650,000	0	0
Future CECRA Sites	0	1,800,000	1,620,000	1,620,000
Abandoned Mine Sites	0	0	3,150,000	3,150,000
Storage Tanks Sites	0	1,012,500	911,250	911,250
TOTAL ADD'L EXPENSES	0	5,754,543	5,916,634	5,916,634
BALANCE (Revenue less Expenses)	0	(5,212,543) (per year)	(6,021,634) (per year)	(4,689,134) (per year)

Notes: * Under SB 382 as amended 3/10/95, additional EQPF revenue does not begin until FY99 Biennium and claims on EQPF are limited to 90% of total orphan/insolvent share.

** Assumptions for Claims on EQPF provided on attached sheet.

Assumptions Used to Estimate Claims on Fund **

Past CECRA Sites (SB382 as introduced)

Twenty (20) sites. Total estimated cleanup cost of \$9,650,000. Estimated orphan share/insolvent share reimbursement cost of \$5,300,000. All claims filed in two-year biennium at \$2,650,000 per year. (Source: DHES)

Future CECRA Sites (SB382 as introduced and as amended)

Twenty-six (26) high-priority sites. No abandoned mine sites included. Total estimated cleanup cost of \$29,900,000. Estimated orphan share/insolvent share cost of \$18,000,000. Claims estimated to occur evenly over a 10-year period at \$1,800,000 per year. 90% of total claim is \$1,620,000 per year. (Source: DHES)

Abandoned Mine Sites (SB382 as amended)

Twenty (20) high-priority sites exist that will cost from \$5,000,000 - \$10,000,000 each to reclaim. (Source: DSL) Most of these sites have some responsible parties, and they would be addressed under CECRA authorities. To address 10 sites in 10 years would require a minimum estimated total cost of \$50,000,000. Estimated 50% orphan share/insolvent share cost of \$25,000,000 distributed evenly over 10 years at \$2,500,000 per year. (Source: DHES)

Sixty (60) medium-priority sites exist that will cost approximately \$1,000,000 each to reclaim. (Source: DSL) Many of these sites have responsible parties or mixed liability, and they would be addressed under CECRA authorities. To address 20 sites in 10 years would require a minimum estimated total cost of \$20,000,000. Estimated 50% orphan share/insolvent share cost of \$10,000,000 distributed evenly over 10 years at \$1,000,000 per year. (Source: DHES)

Total estimated orphan/insolvent cost of CECRA mining sites therefore is \$3,500,000 per year; 90% of total is \$3,150,000 per year.

Storage Tank Sites (SB382 as introduced and as amended)

Approximately 10,000 active underground storage tanks exist in Montana. Leaks from these tanks are reported at a rate of approximately one per day. Under the revised bill, the cleanup of some of these leaking tanks would be eligible for reimbursement from the EQPF. Forty-five (45) cleanups per biennium are estimated to be ineligible for reimbursement from the Petroleum Tank Release Compensation Fund, but would be eligible for reimbursement from the EQPF under the proposed bill. Cleanup costs average \$45,000 per site, for a total estimated cost of \$2,025,500 per biennium, or \$1,012,500 per year. 90% of total claim is \$911,250 per year. (Source: DHES)

Note: * Interest for claims on the EQPF is not included in these estimates

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 17, 1995,
at 3:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)

Members Excused: Sen. Mack Cole
Sen. Bill Wilson

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: SB 382, HB 478

EXECUTIVE ACTION ON HB 478

Motion: SEN. MIKE FOSTER MOVED TO ADOPT REP. STORY'S AMENDMENTS
NO. hb047801.ate AS CONTAINED IN EXHIBIT 1.

Discussion:

Todd Everts, Environmental Quality Council, explained the
amendments to the committee members.

SEN. TOM KEATING asked if there were counties that didn't have
conservation districts. Laurie Zeller, Conservation Districts
Bureau, DNRC, replied there were a few areas where they do not
have conservation districts.

Vote: MOTION TO ADOPT AMENDMENT NO. hb047801.amc WITH THE PROPOSED CHANGES, CARRIED UNANIMOUSLY.

Motion: SEN. VIVIAN BROOKE MOVED TO CONCUR IN HB 478 AS AMENDED.

Discussion:

SEN. WELDON asked if the conservation districts were comfortable with the bill as amended. CHAIRMAN GROSFIELD said yes.

Vote: MOTION TO CONCUR IN HB 478 AS AMENDED, CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 382

CHAIRMAN GROSFIELD asked for agency comments.

Tim Baker, Counsel for the State Superfund Program, said he had a brief overview of the state superfund law that he prepared for the committee to help them understand the changes that have been proposed. He said that the State Superfund law, also known as CECRA, "is triggered when there is a release or threatened release from a facility, of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, welfare, and safety or the environment." He said after that the department conducts a cleanup, or orders other liable parties to do the cleanup. See explanation in EXHIBIT 3.

Bob Robinson, Director, Department of Health and Environmental Sciences said voluntary cleanup amendments should be passed and become part of the Superfund law. Mr. Robinson reviewed some of the department's concerns and some proposed amendments with the committee.

Mr. Robinson said DHES and the Governor oppose SB 382 because it substantially undermines a liability scheme that currently provides for an effective cleanup program with minimal litigation and transaction costs. While negotiations with industry representatives have addressed their concerns with remedy selection and voluntary cleanup portions of the bill, DHES and the Governor remain opposed to Sections 1-5 and 7-9 of the bill, which undermine the CECRA liability scheme. EXHIBIT 4.

{Tape: 1; Side: B}

Mr. Robinson reviewed their proposed amendments with the committee members as contained in EXHIBIT 4.

CHAIRMAN GROSFIELD asked Chris Tweeten, Department of Justice if he would comment on amendment 108. He replied they didn't think the liability scheme should be changed. If it was changed, it would be essential for that language to be in the bill.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS RELATED TO THE VOLUNTARY CLEANUP PLANS AND CLEANUP STANDARDS, WHERE THE INDUSTRY AND THE DEPARTMENT WERE IN AGREEMENT.

Discussion:

CHAIRMAN GROSFIELD said it was his understanding that the amendments that everyone agreed upon, were the amendments in Exhibit 4 indicated by double shamrocks, namely amendment no's. 40-44, 54-106, and 108. EXHIBIT 4.

CHAIRMAN GROSFIELD said there were a total of 108 amendments to consider, and it seems that it would be easier to segregate them.

SEN. B. F. "CHRIS" CHRISTIAENS said the bill with all the amendments was so confusing, he wondered if the Montana Consensus Council couldn't do a study over the next biennium.

SEN. WELDON said to Mr. Robinson that he had talked about a conversation he had with the Governor concerning the bill and how it related to the Consensus Council. Mr. Robinson said he visited with the Governor as to a possibility for studying the relationship to the funding of the RIT, perhaps looking at why it was created and how it was being used. It goes beyond just the Superfund, it goes to appropriation decisions and priorities that the Legislature has evolved to since the RIT was created.

SEN. WELDON said the bill was problematic, but he appreciated all the work that the department and interested parties have done on the amendments. It seems that the Consensus Council or the EQC could undertake an interim study.

Substitute Motion/Vote: SEN. WELDON MADE A SUBSTITUTE MOTION TO TABLE THE BILL. MOTION FAILED 3-6 ON A ROLL CALL VOTE.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS FROM EXHIBIT 4 FOR SECTION 6, AND FOR SECTIONS 10-18.

Discussion:

SEN. BROOKE asked Carol Fox, Manager of the State Superfund Program, if the sections that were just moved were workable in the Superfund program. She replied that Sections 10-18 addressed voluntary cleanup and they could live with those. Section 6 was the remedy selection, and the department made some compromises and they were okay.

Vote: MOTION TO ADOPT AMENDMENTS IN SECTION 6, AND SECTIONS 10-18, CARRIED 6-3 WITH SENATORS KEATING, BROOKE, AND WELDON VOTING NO.

{Tape: 2; Side: A}

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. sb038203.amc AS CONTAINED IN EXHIBIT 5.

SEN. FOSTER said in addition to those amendments that relate to the two topics which were just passed, he would move these amendments and ask the department to comment on them.

Mr. Everts said the amendments that were just passed deal with cleanup standards and the voluntary plans. These amendments were amendments to the amendments.

Leo Berry, Attorney, said amendments no. 1,4,5,6, and 7 apply to the cleanup standards and the voluntary remedies. They were consensus amendments that they encourage the committee to adopt.

Mr. Everts explained to the committee where the amendments fit into the Gray Bill.

SEN. CHRISTIAENS asked if there were any more amendments than what they have already seen. **CHAIRMAN GROSFIELD** said yes. **SEN. CHRISTIAENS** said he would like to see all of the amendments put into the Gray Bill, including the conceptional amendments. He said he would like to see one final version where everything was in place. **CHAIRMAN GROSFIELD** said they cannot get a bill printed until the amendments were adopted. Amendments to the amendments had been done in other committees.

SEN. CHRISTIAENS said why doesn't the committee adopt all the amendments and then put the bill into a final form, because he didn't understand what was happening with the amendments.

Mr. Berry said it was just a matter of how the committee has chosen to proceed through the bill. One way would be to adopt all the amendments and then argue about particular parts of the bill. The committee had chosen to go part by part and that makes sense.

SEN. BROOKE said she would oppose all of the action on SB 382, because the subject needs more work, discussion, and input from the Legislature.

Substitute Motion/Vote: **SEN. FOSTER MADE A SUBSTITUTE MOTION TO ADOPT AMENDMENTS NO. 1,4,5,6, AND 7 from Exhibit 5. MOTION CARRIED 6-3 WITH SENATORS BROOKE, CHRISTIAENS, AND WELDON VOTING NO.**

Motion: **SEN. FOSTER MOVED TO ADOPT AMENDMENTS 2, 3, AND 8, FROM EXHIBIT 5 AND ALL OF THE GRAY BILL.**

SEN. WELDON said on the sheet that **Mr. Robinson** provided, he estimated that over the next 10 years approximately \$48 million in valid claims on the Environmental Quality Protection Fund may accumulate but cannot be paid. He asked **John Tubbs** if he agreed with that statement. He replied he agreed with the department's analysis, and their numbers match the departments in terms of cash flow into the account. **SEN. WELDON** said it says that additional revenue would have to be raised for possible

reimbursement claims. He asked **Mr. Tubbs** from what source. He replied the DNRC and other agencies that get RIT funding were concerned about that. Currently the bill creates approximately a \$4 million hole in agency funding in the next biennium.

Vote: MOTION TO ADOPT AMENDMENTS NO'S. 2,3, AND 8, AND ALL OF THE GRAY BILL FAILED 6-4.

Motion: SEN. FOSTER MOVED TO DO PASS SB 382 AS AMENDED.

Discussion:

SEN. KEATING asked if the Draft Discussion No. 2, aside from those amendments that were approved, was substantially different from the bill. **CHAIRMAN GROSFIELD** answered yes.

Mr. Berry said that joint and several liability was stricken from the original bill. If you pass the bill as amended, joint and several liability would no longer be part of Montana law.

SEN. KEATING said that under current law, joint and several liability says that anyone that has anything to do with the liability regardless of how much of it they caused, can be held responsible for 100% of it. What we were trying to do in the Draft Discussion No. 2 was, to modify the liability to make it applicable to the person responsible for that liability. If any of those were unable to be found or unable to pay, their portion would be paid out of the orphan fund. Those parties responsible would be responsible for their proportionate share of cleanup, but not everyone's share.

SEN. KEATING said that sounds like a pretty reasonable amendment. The idea of sticking one party for the whole problem, although they didn't cause the whole problem, is unfair. He said they should get the responsible parties so the others wouldn't have to pay more than their share.

SEN. CHRISTIAENS said one of the reasons why he did not support that was, that under the orphan share, it means the taxpayers.

SEN. KEATING said the department was saying there were a bunch of holes out there, but they haven't identified the responsible parties. If there was \$50 million out there in cleanup costs, it may be for legitimate orphan holes anyhow.

{Tape: 2; Side: B}

Mr. Robinson responded that he asked the Superfund people to go back and look at the existing claims that they have. There were 271 Superfund sites. 51 of those are high priority nonmining sites. They estimate that \$18 million will be attributable to orphan shares. The bill only applies to 90% of that so it comes to \$16.2 million. The Department of State Lands did the same thing. They came up with 10 sites that were high priority abandoned mine sites. The DSL estimates the cost of cleanup

between \$5 million to \$10 million. They did the same thing with underground storage tanks. They have approximately \$56 million of cleanup against orphan shares.

Mr. Berry said they don't know how the department came up with the \$56 million. He said they would disagree with the department's estimates. The two high ranking projects of DSL were Corbin Flats and Joslyn Street tailings. The DSL estimates \$5 million to \$10 million to clean up each of those sites. The owner of Corbin Flats estimates \$1.8 million to \$5 million. **Mr. Berry** said he hired a consultant to give him a cost estimate of Joslyn Street tailings. Depending upon what remedy was used it would be between \$100,000 to \$1 million. Attaching a \$5 million price tag to that site was a real stretch.

SEN. KEATING said those sites had been there for decades and haven't posed any threat to public health. **Mr. Berry** said the problem was when it rains on the tailings it washes the metals into the groundwater. He didn't think there was any threat to anyone, but the environment was being impacted.

SEN. WELDON said rather than 6% of the interest going into the RIT fund, it would be about 21%. **Mr. Tubbs** referred to the flow charts of the RIT proceeds and interest for 1997 and 1999.

EXHIBIT 6. (Those flow charts were reviewed at the hearing)

SEN. WELDON asked how a proportionate share of liability was determined. **Tim Baker, DHES** said the department would be required to determine proportionate liability through the courts. If the department issued an order to one of the liable parties, that party would have the ability to go to court and challenge the order, and maintain that it was only liable for a proportionate part of the cleanup. The department would have to try to identify as many liable parties as possible.

SEN. WELDON asked what money would be used to do a cleanup. **Mr. Robinson** replied if that was defined as an emergency, there would be \$.5 million that could be drawn upon. If there wasn't any risk to the environment or public health, nothing would be done.

SEN. KEATING asked **Mr. Robinson** what does CERCLA do. He replied that CERCLA was the federal Superfund. **SEN. KEATING** asked **Mr. Robinson** what they used the \$3.4 million of RIT funds for. **Mr. Robinson** replied that was for operating expenses of the Superfund in their remediation division. \$250,000 of that was earmarked for an emergency cleanup. In fiscal year 1996 and 1997 there was \$25,000 projected per year. That \$25,000 matches on a 90%-10% ratio which would generate about \$225,000 in federal grant dollars for the Superfund. \$94,000 goes into the leaking underground storage tank program for those that were not subject to the release compensation funds. \$171,000 goes into the state drinking water program. \$165,000 goes into the state groundwater program. \$295,000 goes into the water quality management program. \$85,000 for water pollution control. \$28,000 for

administration support. In the hazardous waste management program there was \$560,000. In the regular underground storage tanks program, about \$54,000.

SEN. TVEIT asked for a brief explanation of what the committee actually had done with putting in, taking out, and all the amendments.

Mr. Everts responded that the committee amended in voluntary cleanup standards from the Gray Bill into the introduced version of the bill. The bill as it is now, strikes joint and several liability. The funding issues were still in the bill. Basically what you have is, the bill as introduced with the amendments that were added on voluntary cleanup and the cleanup standards.

CHAIRMAN GROSFIELD said he did not like joint and several liability, because it was grossly unfair. That is what is in place now, but he was also troubled about jerking the funding from the variety of programs we have heard about. That will be very difficult for the Legislature to deal with. He said he was not in favor of eliminating joint and several liability like the bill does, but felt we should try to get away from that eventually, and going back to the kind of liability that the bill tries to point toward.

{Tape: 3; Side: A}

Substitute Motion: CHAIRMAN GROSFIELD MADE A SUBSTITUTE MOTION STRIKING SECTIONS 1-5, SECTIONS 7-9, SECTIONS 19-21 OF THE ORIGINAL BILL, ADDING AMENDMENT NO. 108 FROM THE DEPARTMENTS AMENDMENTS, AND ADDING A NEW SECTION THAT READS: "THE DHES, WITH LEGISLATIVE OVERSIGHT FROM THE EQC, SHALL INSTITUTE A COLLABORATIVE PROCESS INVOLVING ALL AFFECTED AND INTERESTED PARTIES THAT SPECIFICALLY ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY WITH RESPECT TO CLEANUP OF STATE CECRA SITES AS A RESULT OF ELIMINATING JOINT AND SEVERAL LIABILITY AND ANY RELATED FUNDING NECESSARY TO CLEAN UP STATE CECRA SITES. THE DEPARTMENT SHALL SUBMIT A REPORT AND LEGISLATIVE PROPOSALS THAT RESULTED FROM THAT PROCESS TO THE 55TH LEGISLATURE."

SEN. KEATING said basically what the amendment would do would have voluntary cleanup standards and a study. Mr. Berry said that would also change the cleanup standards in the mini Superfund.

Vote: MOTION TO ADOPT CHAIRMAN GROSFIELD'S PROPOSED AMENDMENT, CARRIED 6-3 WITH SENATORS WELDON, FOSTER, AND BROOKE VOTING NO.

Motion/Vote: SEN. KEATING MOVED TO DO PASS SB 382 AS AMENDED. MOTION CARRIED 6-2 WITH SENATORS CHRISTIAENS AND BROOKE VOTING NO.

1

DATE 3-17-95

[illegible]

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ANALYSIS OF SB 382**BACKGROUND**

In 1980, Congress enacted CERCLA (Superfund) to address a legacy of contaminated sites. CERCLA has three purposes. First, notification of a spill or release of a hazardous substance. Second, creation of a fund to respond to a spill or a release. And third, development of a plan to cleanup a spill or a release.

In 1985, the Montana legislature enacted a state superfund law (CECRA) to address sites within the state. The legislature patterned CECRA after CERCLA. CECRA is triggered when there is a release or threatened release from a facility of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, welfare, and safety or the environment.

The statutory goals of CECRA are to protect human health and the environment, to have liable persons perform cleanup activities, and if a government entity performs the cleanup, to have a liable person pay for those cleanup activities.

SB 382 and Senator Harp's amendments affect CECRA's (1) Liability scheme, (2) Degree of cleanup and remedy selection, and (3) Voluntary cleanup plans. The Department of Health and Environmental Sciences' amendments strike sections 1 through 5 of the bill that amend the liability scheme and remedy selection provisions of CECRA. The department's amendments generally revise the voluntary cleanup provisions of the bill.

1. Liability

CECRA and CERCLA impose liability for releases of hazardous or deleterious substances based on a person's relationship to a contaminated property and not necessarily by that person's actions. Presently, these statutes impose a strict, joint, and several liability scheme. Senator Harp's amendments make the following changes:

Definitions:

- changes the definition of disposal to an affirmative act causing or contributing to a

discharge and therefore changing the liability scheme from strict liability to liability based on an affirmative act, § 2 (4), [p. 7]

- adds aggregate liability, which allows a liable party to subtract the orphan share from its total liability, § 2 (1), [p. 7]
- adds orphan share which is the share of liability attributed to a party that cannot be found, § 2 (10), [p. 9]
- adds reasonably anticipated future uses, used mostly to determine the degree of cleanup based on the local land use requirements of an area, such as zoning, § 2 (14), [p. 11]

Reimbursements and Penalties - Proceedings - Defenses:

- strikes "jointly and severally" creating a new liability scheme called proportionate liability, § 5 (1)(a), [p. 20]
- creates an exemption from liability under CECRA for persons purchasing a facility before May 22, 1989, § 5 (1)(b), [p. 21]

2. Degree of Cleanup / Remedy Selection

Presently, CECRA requires that a contaminated site be cleaned up so that the site may comply with applicable federal and state environmental requirements. CECRA allows the department to consider cleaning up the site to the extent that the site may also comply with substantive state and federal requirements. In approving a remedial action, the department has to select a remedial action that at a minimum protects the public health, safety, and welfare and the environment, using cost effective and permanent solutions. Moreover, the department may require financial assurance from the liable party to ensure the maintenance of the site. Senator Harp's amendments make the following changes:

- strikes language that required the department to protect at a minimum public health, § 6 (2)(e), [p. 28]
- still requires cleanup consistent with applicable federal and state environmental requirements, § 6 (2)(a), [p. 29]
- still allows the department to consider federal and state substantive environmental requirements, § 6 (2)(b), [p. 29]
- requires the department to select remedial actions considering:
[pp. 29, 30]
 - * present and reasonably anticipated future uses, § (2)(c)

- * technical practicability, § 6 (2)(c)(iii)
- * treatment technologies, § 6 (2)(c)(iv)
- * cost effectiveness, § 6 (2)(c)(v)
- * community acceptability, § 6 (3)

- allows the department to select a remedy that does not meet applicable federal and state environmental requirements under certain circumstances, § 6 (4)(a) through (e), [p. 30]

3. Voluntary Cleanup Plans

This is a new section that allows and encourages voluntary cleanup of facilities where releases of hazardous or deleterious substances exist.

Eligibility

- facilities where CECRA has already been triggered, § 12 (1), [p. 38]
- except [p. 38]
 - * National Priorities List (NPL) sites, § 12 (1)(a)
 - * facility for which an order or consent decree has been issued, § 12 (1)(b)
 - * facility subject to agency order or judicial action regarding a release of a hazardous substance, § 12 (1)(b)
 - * facility where the release is regulated by the Underground Storage Tank Act, § 12 (1)(d)
- The department may agree to accept a plan for the above exceptions. However, the department may not accept a plan for an NPL site. § 12 (2), [p. 38]
- The department may address complexities in an administrative order or consent decree. § 12 (3), [p. 39]
- If an applicant disagrees with the department's decision regarding a plan, the applicant may request a hearing before the board. § 12 (4), [p. 39]

Requirements

- legal description and map of relevant features of facility, § 14 (2)(a), [p. 41]
- operational history, including ownership of facility, § 14 (2)(e), [p. 41]
- current and reasonably anticipated future uses of the facility and the adjacent properties, § 14 (2)(f), [p. 41]

- compliance history of facility, §14 (2)(j), [p. 42]
- remediation proposal requirements, § 14 (3)(a) through (f), [p. 42]

Public Participation

- the department shall publish a notice of proposed voluntary cleanup plan and provide 30 days for written comments, §15 (1) through (5), [pp. 43, 44]

Approval

- the department shall review an application and provide a completeness notice, § 16 (1), [p. 44]
- the department shall notify applicant if plan is approved or disapproved, § 16 (2), [p. 44]
- the department shall approve a plan if the plan meets the requirements of § 14 (eligibility) and attains the degree of cleanup required in 75-10-721 (degree of cleanup), § 16 (5), [pp. 45, 46]
- the department may not approve a plan that will take longer than 24 months to complete, §16 (7), [p. 46]

Closure

- this section strikes language releasing an applicant from liability, § 18 (1), [p. 48]
- written notice that a petition for closure is approved must include specific language, § 18 (3), [pp. 49, 50]

3/17/95

SUMMARY OF DHES CONCERNS WITH SB382, BASED ON 3/15/95 GREY BILL

provided by Bob Robinson, Director
Montana Department of Health and Sciences

DHES and the Governor oppose SB382 because it substantially undermines a liability scheme that currently provides for an effective cleanup program with minimal litigation and transaction costs. While negotiations with industry representatives have addressed our concerns with remedy selection and voluntary cleanup portions of the bill, DHES and the Governor remain opposed to Sections 1-5 and 7-9 of the bill, which undermine the CECRA liability scheme.

The following is an outline of the Administration's position on the 3/15/95 grey bill version and on language we understand will be provided to the Committee by industry representatives today based on a 3/17/95 negotiation session. Most of industry's amendments pertaining to the funding and liability provisions fall under what we call "damage control." DHES considers these "damage control" amendments, marked below with a shamrock (♣), as necessary should the liability changes proposed in Section 5 remain in the bill.

♣ pp. 5 - 7, amendments 4-11: [RIT reallocation and EQPF/abandoned mines funding]: These changes increase allocation of the RIT interest to the Environmental Quality Protection Fund (EQPF) and a new abandoned mine reclamation account to partially offset the increased funding liability to the State for orphan and insolvent shares. DHES maintains that the increase in funding is inadequate compared to the increased funding liability (refer to Bob Robinson's 3/15/95 estimate of fiscal impacts). These changes also decrease the RIT interest allocation to the renewable resource and reclamation and development state special revenue accounts.

♣ p. 7, amendment 12: [Definition of aggregate liability]

p. 7, amendments 13 and 14: [Definition of disposal] DHES urges the Committee to delete the new definition of disposal. The CECRA program currently uses the definition of disposal contained in the hazardous waste management statutes. The definition offered by proponents creates ambiguity by inserting the language "affirmative act causing or contributing to", and will increase litigation. The definition of disposal is important because owners or operators of the facility "at the time of disposal" are among the persons liable under CECRA. If the proponents are successful in severely limiting the liability of current owners/operators, the liability of owners/operators "at the time of disposal" will be critical to the effectiveness of the program.

DHES has not had time to evaluate the impact of a 3/17/95 proposal to amend this definition; however, should this definition remain, then DHES supports the 3/17/95 proposed addition to this definition that will address some of DHES' concerns regarding tank and barrel sites.

Amendments to Senate Bill No. 382
First Reading CopyRequested by Sen. Harp
For the Committee on Natural ResourcesPrepared by Martha Colhoun
March 17, 1995

1. Page 6, line 12.

Insert: "

(14) "Reasonably anticipated future uses", means likely future land or resource uses considering local land and resource use regulations, ordinances, restrictions, or covenants; historical and anticipated uses of the facility; patterns of development in the immediate area; and relevant indications of anticipated land use from the owner of the facility and local planning officials."

Renummer: subsequent subsections

2. Page 17, line 2.

Following: "part."

Insert: "Claims for reimbursement may not include interest, legal fees and legal costs, or damages for injury to, destruction of, or loss of natural resources. All claims for reimbursement are subject to and dependent on future appropriations to the fund."

3. Page 10, line 17.

Following: "~~part~~"

Insert: "

(10)(a) Whenever the department acts pursuant to 75-10-712 and this section and the department is unable to determine the identity of any liable persons, the department shall give notice to the current owner of the property that it is seeking access to take remedial action. The department may then file a notice of the right to claim a lien against the property.

(b) If the department expends environmental quality protection funds to remediate the property or reimburse other parties and the department determines, based on an appraisal by an independent qualified appraiser, that the work has resulted in a significant increase in the fair market value of the property, the department may file a lien against the property.

(c) If the department files a lien against the property, the department shall, within 6 months, file a lien statement specifying:

(i) the value of the property before commencing the action;

(ii) the value of the property after the work has been completed;

(iii) a listing of the appraisal upon which the values in subsections (10)(c)(i) and (10)(c)(ii) are based and the location where those appraisals may be examined; and

(iv) the amount of environmental quality protection funds expended.

(d) The amount of the lien must be the lesser of either the value of the property upon completion of the remediation or the amount of funds actually expended by the department.

(e) If a lien is filed, the department shall send, by certified mail, copies of the lien, the statement of costs, and the appraisals to the property owner of record.

(f) Within 60 days after the department files the lien, the owner of the property may petition the district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds expended by the department or to determine the increase in the market value of the property as a result of the department's action. If the court's determination of the lien amount differs from the lien filed by the department, that amount must be recorded with the department's statement.

(g) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part. Interest on the lien accrues at the rate of 10% annually and may not be compounded."

4. Page 14, lines 3 through 26.

Following: "~~e~~" on line 3

Strike: "shall" on line 3 through "considered" line 26

Insert: "

: (a) except as provided in subsection (4), shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) may consider substantive state or federal environmental requirements, criteria, or limitations that are relevant to the site conditions; and

(c) shall select remedial actions, considering present and reasonably anticipated future uses, that:

(i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and the environment;

(ii) are effective and reliable in the short-term and the long-term;

(iii) are technically practicable and implementable;

(iv) use treatment technologies or resource recovery technologies if practicable, giving due consideration to institutional and engineering controls; and

(v) are cost-effective.

(3) In selecting remedial actions, the department shall consider the acceptability of the actions to the affected community, as indicated by community members and the local government.

(4) The department may select a remedial action that does not meet an applicable state environmental requirement, criteria, or limitation under any one of the following circumstances:

(a) The remedial action is an interim measure and will become part of a total remedial action that will attain the applicable requirement, criteria, or limitation.

(b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to human health and the environment than other remedial action alternatives.

(c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from an engineering perspective.

(d) The remedial action will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

(e) Compliance with the requirement would not be cost-effective.

(5) For purposes of this section, cost-effectiveness must be determined through an analysis of incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into account the total anticipated short-term and long-term costs of remedial action alternatives considered, including the total anticipated cost of operation and maintenance activities."

5. Page 19, line 26.

Following: "75-10-721."

Insert: "Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would take longer than 24 months after department approval to complete."

6. Page 20, lines 1 and 2.

Following: "conditions"

Strike: "on the property"

Insert: "at the facility"

Following: "that" on line 2

Strike: "exist as of"

Insert: "are known to the department at"

Following: "time of"

Strike: "submission of the application"

Insert: "department approval"

Following: "voluntary"

Strike: "cleanup plan"

Insert: "remediation proposal"

7. Page 20.

Following: line 5

Insert: "

(8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or substantially change the scope of the approved plan, the applicant shall promptly notify the department. The department may require the applicant to submit an amendment to the approved plan to address the unforeseen

conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to [section 12(3)]."
Renumber: subsequent subsections

8. Page 23, line 6.

Strike: "date"

Insert: "dates"

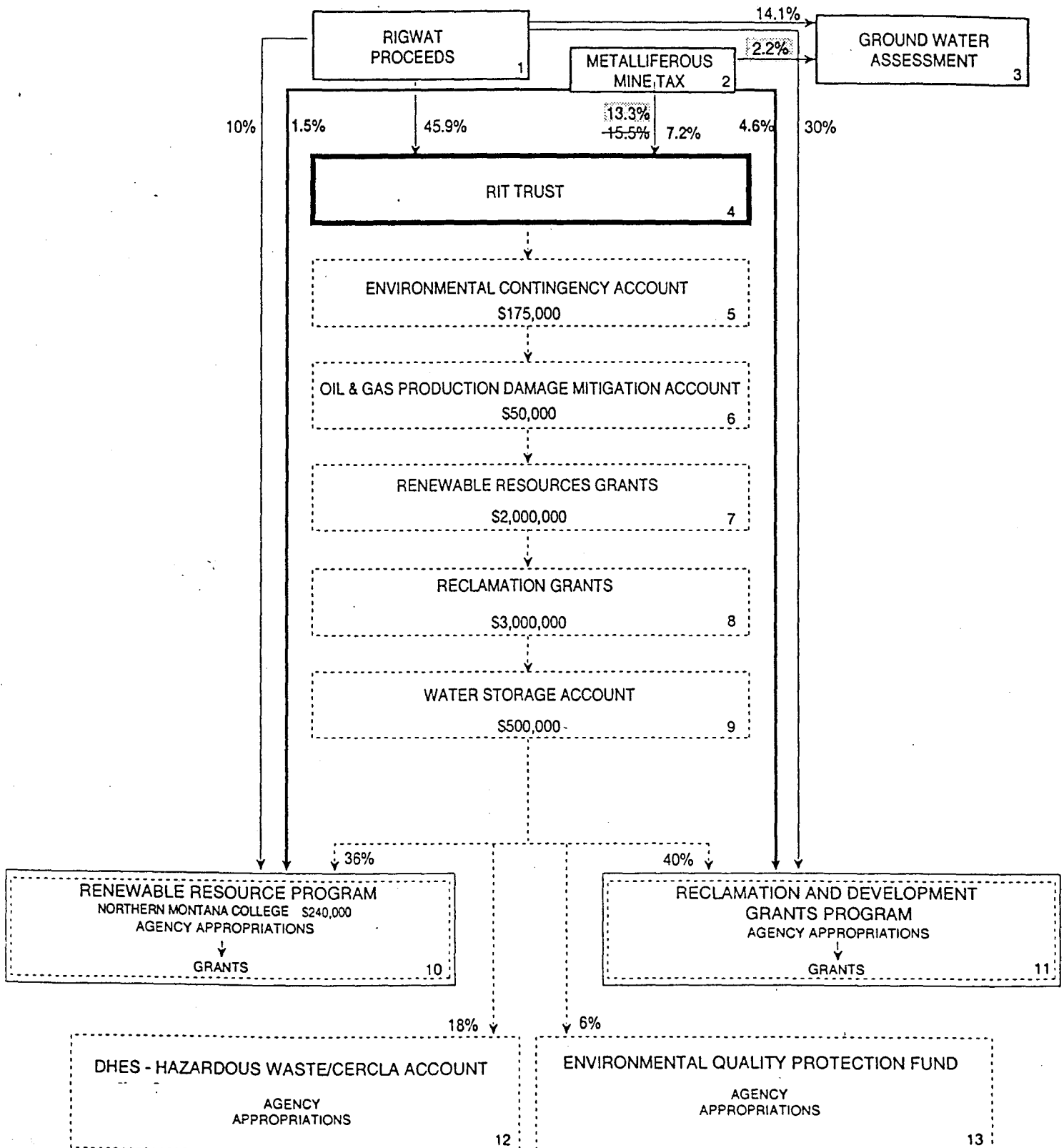
Strike: "[This act] is"

Insert: "(1) [Section 1] is effective July 1, 1997.

(2) Except as provided in subsection (1), [this act] is"

ALLOCATION OF RIT PROCEEDS AND INTEREST

1997 Biennium



RIGWAT PROCEEDS, RIT TRUST INTEREST EARNINGS, AND EXPENDITURES
1997 Biennium

DATE 3-17-95
BILL NO. SB-382

RIGWAT PROCEEDS PROJECTIONS	RIGWAT Proceeds	Metal Mine Tax Proceeds 15.5%	Deposits To RIT Trust	Trust Balance
FY 95	\$2,979,674	\$797,469	\$2,463,107	\$91,776,719
FY 96	3,041,004	872,800	2,268,621	94,045,340
FY 97	3,030,203	823,029	2,213,892	96,259,232

Metal Mine Total
5,630,968
5,309,865

RIT TRUST INTEREST EARNINGS PROJECTIONS	FY96	FY97	TOTAL
	7,701,221	7,750,857	15,452,078

TOTAL 1997 BIENNIAL ALLOCATION OF RIT INTEREST EARNINGS	\$15,452,078
Environmental Contingency Account	\$175,000
Oil & Gas Production Damage Mitigation Account	50,000
Renewable Resource Grant & Loan Program	2,000,000
Reclamation & Development Grants	3,000,000
Water Storage Account	500,000
TOTAL BIENNIAL APPROPRIATIONS	5,725,000
AMOUNT AVAILABLE FOR FURTHER DISTRIBUTION	9,727,078

Distribution of Remaining Interest Earnings

Account	Renewable Resource	Reclamation & Development	Hazardous Waste/ CERCLA	Environmental Quality Protection	TOTAL
Percent Distribution of RIT Interest	36%	40%	18%	6%	100%

Beginning Balance	\$673,742	\$0	\$968,414	\$1,300,000	\$2,942,156
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Revenues					
RIT Interest	\$3,501,748	\$3,890,831	\$1,750,874	\$583,625	\$9,727,078
RIGWAT Proceeds	607,121	1,821,362			\$2,428,483
Debt Service Sweep (04011 and 04008)	919,444				919,444
RRD Loan Repayments	238,900				238,900
Interest (STIP)			80,000		80,000
Cost Recoveries				688,816	688,816
Administrative Fees	10,000				10,000
State Owned Project Revenue	919,290				919,290

Total Funds Available	\$6,870,245	\$5,712,193	\$2,799,288	\$2,572,441	\$17,954,167
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Appropriation:					
Montana State University, Northern	240,000				240,000 SA
DNRC Centralized Services Division	875,245	154,001			1,029,246 A
DNRC Conservation and Resource Development	1,288,981	1,203,004			2,491,985 A
DNRC Water Resources Division	1,737,137	1,997,129			3,734,266 A
Reserved Water Rights Compact Commission	131,638	534,199			665,837 A
DNRC State Water Projects	2,190,000				2,190,000 A
DSL Reclamation Division		2,081,837			2,081,837 A
DSL Central Management		78,085			78,085 A
DHES Environmental Division			2,794,711	1,976,174	4,770,885 A
DHES Radon		50,000			50,000 A
Governor's Office -- Flathead Basin Commission	80,082				80,082 A
Water Court	1,038,389				1,038,389 A
NRIS - State Library	322,007	285,036			607,043 A
Environmental Quality Council		28,083			28,083 A
Pay Plan					0

Total Appropriations	\$7,903,479	\$6,411,374	\$2,794,711	\$1,976,174	\$19,085,738
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Projected Biennium Ending Balance	(\$1,033,234)	(\$699,181)	\$4,577	\$596,267	
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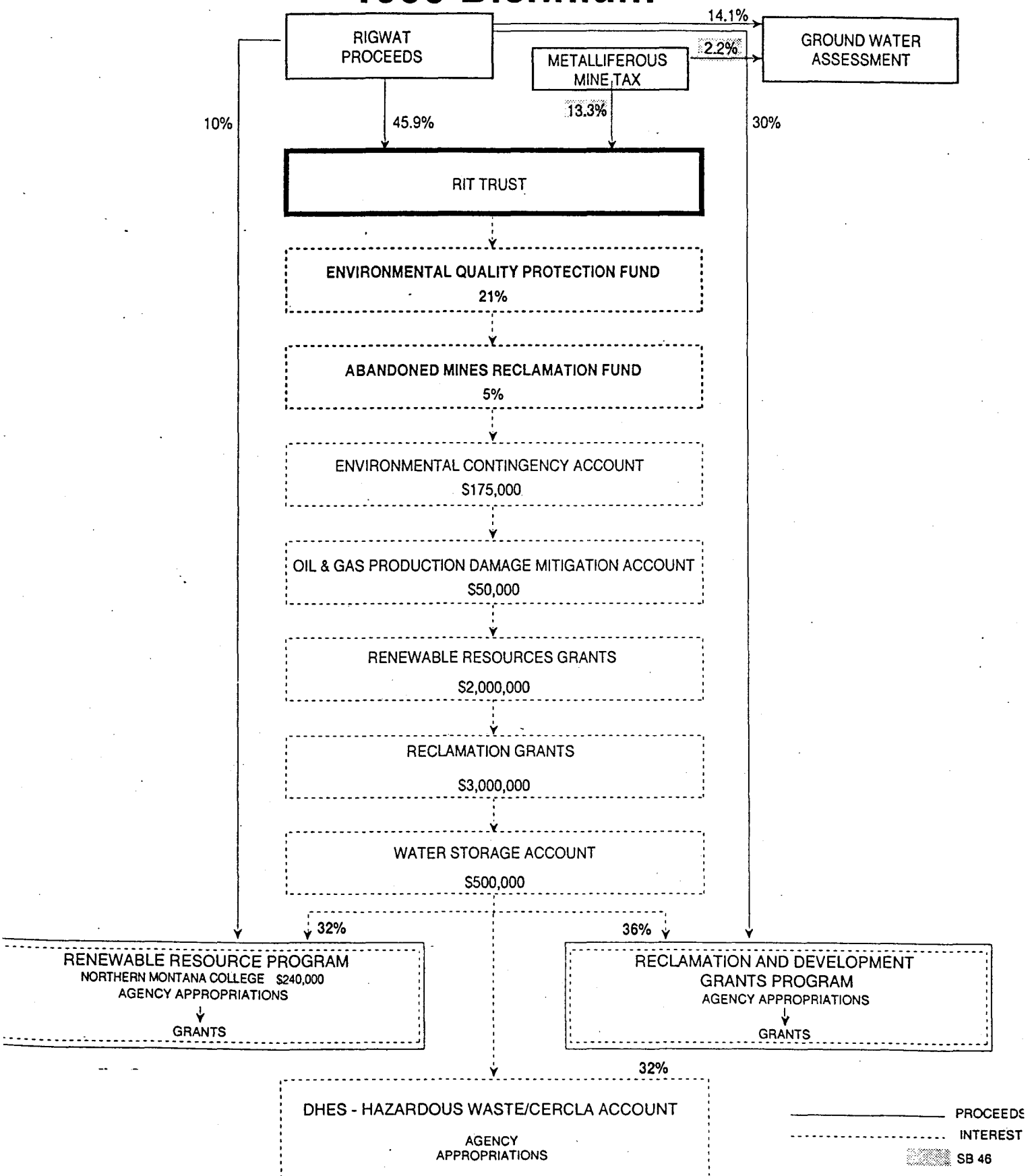
Potential Allocation of Metal Mines Tax	\$169,583	\$508,749			
MSU/Northern - annual appropriation	(240,000)				
Lost interest revenue	(16,006)	(17,784)	(8,003)	(2,668)	(\$44,460)
Projected Balance with Allocation of Metal Mine Tax	(\$1,119,657)	(\$208,217)	(\$3,426)	\$593,599	

Ending fund balance RRGL + RDG (1,732,415)
Ending fund balance with metal mine tax RRGL + RDG (1,327,873)
A - Appropriations reflect subcommittee action
SA - Statutory Appropriation

SB 382 WITH 2/16/95 AMENDMENTS

ALLOCATION OF RIT PROCEEDS AND INTEREST 1999 Biennium

DATE 3-17-95
BILL NO. SB-382



RIGWAT PROCEEDS, RIT TRUST INTEREST EARNINGS, AND EXPENDITURES
1999 Biennium

RIGWAT PROCEEDS PROJECTIONS	RIGWAT Proceeds	Metal Mine Tax Proceeds 15%	Deposits To RIT Trust	Trust Balance
FY 97	3,030,203	823,029	2,213,892	\$96,259,232
FY 98	3,030,203	823,029	2,213,892	98,473,124
FY 99	3,030,203	823,029	2,213,892	100,687,016

Metal Mine Tax
(100%)
5,309,865
5,309,865

RIT TRUST INTEREST EARNINGS PROJECTIONS	FY98	FY99	TOTAL
	7,703,657	7,763,086	15,466,743

TOTAL 1999 BIENNIUM ALLOCATION OF RIT INTEREST EARNINGS			\$15,466,743
ENVIRONMENTAL QUALITY PROTECTION	21.0%	3,248,016	
ABANDONED MINES LAND RECLAMATION	5.0%	773,337	
Environmental Contingency Account		\$175,000	
Oil & Gas Production Damage Mitigation Account		50,000	
Renewable Resource Grant & Loan Program		2,000,000	
Reclamation & Development Grants		3,000,000	
Water Storage Account		500,000	
TOTAL BIENNIAL APPROPRIATIONS			9,746,353
AMOUNT AVAILABLE FOR FURTHER DISTRIBUTION			5,720,390

Distribution of Remaining Interest Earnings

Account	Renewable Resource	Reclamation & Development	Hazardous Waste/ CERCLA	TOTAL
Percent Distribution of RITT Interest	32%	36%	32%	100%

Beginning Balance	\$0	\$0	\$4,577	\$4,577
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Revenues				
RIT Interest	\$1,830,525	\$2,059,340	\$1,830,525	\$5,720,389
RIGWAT Proceeds	606,041	1,818,122		2,424,162
Debt Service Sweep (04011 and 04008)	919,444			919,444
RRD Loan Repayments	238,900			238,900
Interest (STIP)			80,000	80,000
Cost Recoveries				0
Administrative Fees	10,000			10,000
State Owned Project Revenue	919,290			919,290

Total Funds Available	\$4,524,200	\$3,877,462	\$1,915,102	\$10,316,763
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Appropriation				
Montana State University, Northern	240,000			240,000
DNRC Centralized Services Division	875,245	154,001		1,029,246
DNRC Conservation and Resource Development	1,288,981	1,203,004		2,491,985
DNRC Water Resources Division	1,737,137	1,997,129		3,734,266
Reserved Water Rights Compact Commission	131,638	534,199		665,837
DNRC State Water Projects	2,190,000			2,190,000
DSL Reclamation Division		2,081,837		2,081,837
DSL Central Management		78,085		78,085
DHES Environmental Division			2,794,711	2,794,711
DHES Radon		50,000		50,000
Governor's Office -- Flathead Basin Commission	80,082			80,082
Water Court	1,038,389			1,038,389
NRIS - State Library	322,007	285,036		607,043
Environmental Quality Council		28,083		28,083
Pay Plan				0

Total Appropriations	\$7,903,479	\$6,411,374	\$2,794,711	\$17,109,564
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Projected Biennium Ending Balance	(\$3,379,279)	(\$2,533,913)	(\$879,609)	
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Potential Allocation of Metal Mines Tax	\$164,606	\$493,817		
MSU/Northern - annual appropriation	(240,000)			
Lost interest revenue	(14,227)	(16,006)	(14,227)	(2,489,760)
Projected Balance with Allocation of Metal Mine Tax	(\$3,468,901)	(\$2,056,101)	(\$893,836)	

Ending fund balance RRGL + RDG (5,913,192) A - Appropriations reflect subcommittee action
Ending fund balance with metal mine tax RRGL + RDG (5,525,002) SA - Statutory Appropriation

Environmental Quality Protection	ABANDONED MINES LAND RECLAMATION
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Beginning Balance	\$596,267	\$0
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Revenues		
RIT Interest	\$3,248,016	\$773,337

Cost Recoveries	490,000	
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Total Funds Available	\$4,334,283	\$773,337
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Appropriation		
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DSL Reclamation		773,337
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DHES	1,976,174	
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Total Appropriations	\$1,976,174	\$773,337
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Projected Ending Balance	\$2,358,109	\$0
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MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-17-95 BILL NO. SB-382 NUMBER 1

MOTION: To Table SB-382

FAILED 6-3

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING		X
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON		
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN		X

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-17-95 BILL NO. SB 382 NUMBER 2

MOTION: To Adopt Amendments

No 2, 3, 8

FAILED 6-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE		X
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN		X

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0382, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the degree of cleanup required for remedial actions; creating a voluntary cleanup and redevelopment process; requiring the Department of Health and Environmental Sciences (DHES) to set up a collaborative process that analyzes the elimination of joint and several liability and related funding necessary to clean up superfund sites.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact.
2. The bill provides workload relief measures (e.g., application limits) which will enable the existing staff to manage the increased workload for voluntary cleanups within the existing budget.
3. The collaborative department study can be accomplished with existing program budget and staff.
4. The department costs associated with voluntary remedial action plan review and cleanup oversight will be reimbursed by the applicant as proposed and will have a neutral fiscal impact.
5. The costs associated with public notification and hearings will be minimal and can be absorbed in the program budget.

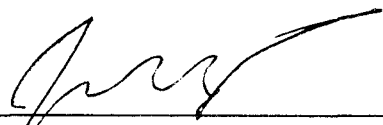
FISCAL IMPACT:

No fiscal impact.

TECHNICAL NOTES:

Section 8(14), Page 26, line 27, refers to reimbursement for voluntary cleanups from the Environmental Quality Protection Fund "pursuant to the requirements and limitations of 75-10-724." However, the current version of 75-10-724 in state law does not contain provisions for these reimbursements. The reference to 75-10-724 in this legislation relates to amendments that have been stricken from this bill. For purposes of this fiscal note, it is assumed that this Section 8(14) will be deleted from this bill.

 3.27.95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JOHN HARP, PRIMARY SPONSOR DATE

Fiscal Note for SB0382, second reading

SB 382-#2

MINUTES

MONTANA 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on March 31, 1995,
at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Douglas T. Wagner (R)

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 366, SB 382
Executive Action: None

Tape 1, Side A

HEARING ON SB 382Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 42, Kalispell, said SB 382 revises the method of selecting cleanup required for remedial actions; creates a voluntary cleanup and redevelopment process; requires the Department of Health and Environmental Sciences to set up a collaborative process that analyzes the elimination of joint and several liability and related funding necessary to clean up state Superfund sites.

Proponents' Testimony:

Leo Berry, Attorney, Montana Mining Association, said individuals who own or operate property are jointly and severally liable for cleaning up those sites. Even if an individual is only one percent responsible for the contamination on the property, that individual can end up paying 100 percent of the cleanup costs under the joint and several liability law, if the other parties don't have any money. Joint and several liability is not included in the federal Superfund law, but it is included in the Montana Superfund law. When joint and several liability is eliminated "orphan shares" are created. There are ways at the federal level to fund orphan shares because of its huge superfund. Montana doesn't have that kind of money. There will be a study that will include finding possible funding sources. SB 382 changes the method of selecting cleanup standards and establishes a voluntary cleanup program. When the Senate amended the bill by taking out all the sections dealing with joint and several liability, it inadvertently eliminated some things that need to be in the bill. These amendments would reinsert those items. **EXHIBIT 1**

Tape 3, Side A

Wally Bell, Montana Powder and Equipment Company, said he purchased the company in 1985. Before he could sell a piece of his property he had to clean it up. He had nothing to do with the contamination of the property. The contamination was caused by previous owners who did ore processing in the early 1900's. Later there was a foundry on the property and after that there was a sand and gravel operation which also contributed to the contamination. Approximately 200 yards of oil-soaked material were removed from the property. There were also 20 yards of mine tailings. The only place to get rid of the mine tailings is somewhere in Salt Lake City, Utah and would cost about \$500 a yard. A fund is needed to help people pay for these types of cleanups.

Sandy Stash, Manager, Atlantic-Richfield Company, said she has managed the cleanup of left overs from the Anaconda Minerals Company. SB 382 is very helpful because it injects some reality into the decisions on how the sites should be cleaned up. The

voluntary cleanup portion of the bill is also very helpful and will encourage companies voluntarily clean up property.

Bob Robinson, Director, Department of Health and Environmental Sciences (DHES). Written testimony. **EXHIBIT 2**

John Davis, Attorney, Butte, supported SB 382.

Bill Allen, Montana Audubon Legislative Fund, supported SB 382.

Ted Lange, Northern Plains Resource Council, said he was neutral to SB 382. **Mr. Lange** said the council liked the idea of the study and the voluntary cleanup section. There is concern about how cost effective the cleanup will be.

Opponents' Testimony:

Ann Hedges, Montana Environmental Information Center, said she was 50% for the bill and 50% concerned about it. **Ms. Hedges** recommended that section 2 should be stricken from the bill and given to the study committee.

Ted Antonioli, Geologist, Missoula. Written testimony. **EXHIBIT 3**

Tape 3, Side B

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BOB RANEY said on page 23, new section 7 which is about public participation, it states that compliance with the section is considered to satisfy the requirements of Title 75, Chapter 1. That is the Montana Environmental Protection Act (MEPA). According to this section all the department has to do is to respond to relevant written or verbal comments during the comment period. **REP. RANEY** asked **Ms. Hedges** for her comments. **Ms. Hedges** said it concerned her and should be clarified and the public should not be cut out of the participation process.

REP. RANEY asked **Mr. Robinson** if he really meant that just listening to some public comments and responding to relevant written or verbal comments is enough to meet MEPA requirements. **Mr. Robinson** said the comments would be on the cleanup plan. Thirty days notice would be given for the public to provide written comments to the department and if ten or more individuals or a government body request it, a public meeting will be conducted at or near the facility regarding the voluntary cleanup plan. There is plenty of opportunity for public participation. **REP. RANEY** asked **Mr. Robinson** if the public could force the department to make a change in the cleanup plan. **Mr. Robinson** said the public could give input to the department but he wasn't sure they could force the department to make a change. The

department would review the public's comments to ensure its concerns are met if they are valid. **REP. RANEY** asked **Mr. Robinson** if the public would have the right to appeal a decision to grant a voluntary cleanup. **Mr. Robinson** replied no. **Rep. Raney** asked **Mr. Robinson** why a citizen wouldn't have the same right of appeal on a voluntary cleanup as an industry has. **Mr. Robinson** said he didn't know why citizens would want to appeal a voluntary cleanup by a company that would be making a proactive effort to cleanup, when the standards are the same as they are for an ordered cleanup.

REP. HAL HARPER asked **Mr. Robinson** how he interpreted "reasonably anticipated future uses" as referred to on page 2 of the amendments at the bottom of the page. **Mr. Robinson** said originally there was language in the bill that basically said reasonably anticipated future uses were limited to zoning or other kinds of restrictions put on by local government. The department thought that was too narrow. The amendments broaden that definition.

REP. DAVID EWER asked **Mr. Robinson** what the difference was between federal superfund sites and state superfund sites in Montana. **Mr. Robinson** said it is the risk to human health and the environment. There is a rating system and anything above 28.5 becomes eligible for the national priority list and can become a federal superfund site. Anything below 28.5 fits under the state superfund law. **REP. EWER** asked **Mr. Robinson** if the owner of the property that has been cleaned up is given a certificate by the state. **Mr. Robinson** said determining what the reasonable and anticipated uses of the land would be is what drives the risk assessment for the level of cleanup. If the site is going to be used for a residential area, the level of cleanup is going to be high. If the site is going to be an industrial area, it might not have to be as clean. When the site has been cleaned up to the required standards, the owner will be notified that he has met the standards and the property is no longer a superfund site. The owner can then sell the property if he so wishes, without having additional liability attached to it. **REP. EWER** asked **Mr. Robinson** if he had given any thought to putting a four year sunset on the legislation. **Mr. Robinson** said the department hadn't considered a sunset, but in 1997 and 1999 the results could be reviewed.

Closing by Sponsor:

Waived

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 9-31-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner			✓

Amendments to Senate Bill No. 382
Second Reading Copy

Requested by Sen. Harp
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 31, 1995

1. Title, line 5.

Strike: "DEGREE OF"

Insert: "METHOD OF SELECTING"

2. Title, line 9.

Strike: "SECTION"

Insert: "SECTIONS 75-10-701 AND"

3. Title, line 10.

Following: "~~DATE AND~~"

Insert: "AN IMMEDIATE EFFECTIVE DATE AND"

4. Page 13.

Following: line 23

Insert: "

Section 1. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited; stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the

environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

- (a) local land and resource use regulations, ordinances, restrictions, or covenants;
(b) historical and anticipated uses of the facility;
(c) patterns of development in the immediate area; and
(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(11)~~ (12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

~~(12)~~ (13) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

~~(13)~~ (14) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(14)~~ (15) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection ~~(14)~~(a) (15)(a) to provide services relating to a remedial action.

~~(15)~~ (16) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Renumber: subsequent sections

5. Page 13, line 27.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

6. Page 19, lines 1 and 5.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

7. Page 19, line 24.
Following: "ELIGIBLE"
Strike: "TO FOLLOW"
Insert: "for"

8. Page 20, line 6.
Following: the second "ACT"
Strike: "."
Insert: "; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent."

9. Page 20, line 7.
Following: "THROUGH"
Strike: "(1) (D)"
Insert: "(1) (e)"

10. Page 20, line 16.
Following: "(4)"
Strike: "EXCEPT" through "(2), IF"
Insert: "If"

11. Page 20, line 17.
Following: "DECISION"
Insert: "to reject the filing of the application"

12. Page 20, line 18.
Following: "UNDER"
Strike: "THIS SECTION"
Insert: "subsection (1) or (3)"
Following: "MAY"
Insert: ", within 30 days of receipt of the department's written decision pursuant to [section 9],"

13. Page 20, line 19.
Following: "SCIENCES."
Insert: "In reviewing a department decision to reject an application under subsection (1) or (3), the board shall apply the standards of review specified in 2-4-704."

14. Page 20, line 21.
Following: "BOARD"
Insert: ", the department,"

15. Page 20, line 23.
Following: "7."
Insert: "A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

16. Page 21, lines 2, 4 and 17.

Strike: "6"

Insert: "7"

17. Page 21, line 23.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

18. Page 23, lines 15 and 24.

Strike: "8(1)"

Insert: "9(1)"

19. Page 25, line 9.

Strike: "6"

Insert: "7"

20. Page 26, line 2.

Strike: "4(3)"

Insert: "5(3)"

21. Page 26, line 16.

Strike: "10(2)(B)"

Insert: "11(2)(b)"

22. Page 26, lines 24 through 27.

Strike: subsection (14) in its entirety

Insert: "

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

23. Page 27, line 9.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

24. Page 28, line 3.

Following: "FOR"

Strike: "THE"

Insert: "[insert"

Following: "IDENTIFIED"

Insert: "]"

25. Page 30, line 13.

Page 30, lines 14 and 15.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

26. Page 30, line 18.

Strike: "OR ADMINISTRATIVE"

27. Page 30, lines 19 through 21.

Following: "."

Strike: "CLAIMS" on line 19 through "." on line 21

28. Page 30.

Following: line 23

Insert: "NEW SECTION. Section 16. Effective date. [This act]
is effective on passage and approval."

Testimony on SB382, as amended

provided by Bob Robinson, Director
Montana Department of Health and Environmental Sciences (DHES)
before the House Natural Resources Committee
March 31, 1995

DHES supports SB382 as amended by the Senate Natural Resources Committee. The bill amends the State Superfund law (CECRA) in three major areas: 1) changing the cleanup standards; 2) establishing a voluntary cleanup program; and 3) providing for a collaborative study that analyzes the possible elimination of strict, several, and joint liability.

1. Changes in Cleanup Standards (pp.13-16, Section 1) DHES worked with industry representatives on changes to the remedy selection criteria (cleanup standards) that would allow cheaper, faster remedies and yet still maintain protection of public health and the environment. Following are highlights of these changes.

- A "reasonably anticipated future uses" standard is added that DHES will use to evaluate the future protectiveness of remedies (Subpart 2C).

- The "permanence" criterion for remedies is replaced with "long and short-term effectiveness" (Subpart 2C(ii)).

- A requirement that remedies be "technically practicable and implementable" is added (Subpart 2C(iii)).

- The bill requires full consideration of institutional and engineering controls while still maintaining a preference for treatment (Subpart 2C(iv)).

- Local community and government acceptance is added as a new remedy selection criterion (Subpart 3).

- Waivers of an applicable regulation are provided. These waivers apply: when the remedy is an interim action (Subpart 4A); when complying with the applicable regulation would increase the risk (Subpart 4B); when the remedy will meet an equivalent standard of performance (Subpart 4D); or when compliance is technically not feasible (Subpart 4C) or not cost effective (Subpart 4E).

- A new definition of cost effectiveness will increase the weight of cost considerations by requiring direct comparison of the additional cost vs. the additional risk reduction attained by each alternative considered.

2. Voluntary Cleanup (pp. 19-28 Sections 2 through 10) Many of the cleanups at state Superfund sites to date have been conducted without the need for formal enforcement action and DHES supports having voluntary cleanup provisions added to CECRA. They will allow a streamlined process that will speed cleanup. Industry proposed the initial voluntary cleanup portions of the bill based on Colorado's voluntary cleanup law. DHES negotiated with industry on their proposal to make it better fit Montana's statute and

program. This bill now reflects a consensus voluntary program except for certain technical corrections and clarifications proposed in amendments that have been presented to this Committee. Following are highlights of these voluntary cleanup provisions.

- The bill includes eligibility criteria that would restrict voluntary cleanups to certain sites. There would be an appeals process to the Board of Health if an applicant disagrees with DHES' eligibility determinations (Section 4).
- Voluntary cleanup plans would include an environmental assessment, a remediation proposal, reimbursement of state costs, and landowner permission (Sections 5 and 6).
- The public would participate through a 30-day public comment period on completed applications (Section 7).
- A completeness review by DHES would ensure that the voluntary cleanup plan meets the requirements of CECRA for protection of public health and the environment (Section 8).
- "Safeguard" provisions would restrict the number of applications to be considered simultaneously, address unforeseeable conditions, address misleading information, and address lack of compliance with a plan (Section 8).
- A closure procedure would provide for "no further action" declaration by DHES when an approved voluntary cleanup plan has been completed (Section 10).

3. Study of Elimination of Joint and Several Liability (pp. 28-29, Section 11)

As originally proposed, SB382 represented a significant change in public policy concerning responsibility for pollution and cleanup by replacing joint and several liability with proportionate liability and restricting current owner liability. These changes would have shifted a significant portion of cleanup costs to the state by requiring the state to pay for orphan and insolvent shares using RIT interest revenues. Significant changes in the RIT interest allocation were proposed to cover the state's increased funding liability; however, DHES estimated the increased funding would have been inadequate to cover anticipated orphan and insolvent shares.

Recognizing the major impacts the proposed changes in CECRA liability would have, the Senate Natural Resources committee proposed a two-year collaborative study on this issue. DHES supports this study alternative because it allows for the comprehensive and thorough analysis that this complex and controversial issue requires.

Explanation of amendments

DHES supports the amendments presented by industry representatives on behalf of the bill sponsor. These amendments were the result of recent negotiations and are mostly technical corrections and clarifications.

TESTIMONY ON HOUSE HEARING OF SB 382

by Ted Antonioli, Geologist, 5907 Longview, Missoula, MT 59803

Lincoln freed the slaves. Gorbachev (by mistake) killed off Communism. The Montana House can strike a smaller but still unmistakable blow against injustice by ridding our statute books of joint and several "superfund" liability - by which courts force parties to pay for damages they did not cause. As you are aware, the essence of joint and several liability is that if you are liable for even the tiniest FRACTION of an environmental problem, you must pay for ALL the cleanup, even for problems caused a hundred years ago by parties who are long dead. This is unfair, and unAmerican.

This federal version of this law has already severely damaged investment in mineral exploration throughout the United States. Mining districts are becoming "tar babies" that no exploration firm or investor wants to touch, for fear of being stuck with remediation for anything ever done in the district. In one case, at Summitville Colorado, ASARCO drilled a handful of exploration drill holes, and then were named as a potentially responsible party to pay for the mess created by a crooked Canadian promoter.

The Superfund law was purported to be a mechanism to speed cleanup by finding some the deep pockets and forcing them to pay. Even some proponents acknowledged this to be patently unfair, but said we needed this approach for pragmatic reasons. In fact, the result has been to turn cleanups into an almost exquisitely slow-motion battle of studies and litigation. But then again, as the process moves slower, and more litigation is required, more billable hours are accrued. As President Clinton pointed out in early 1993 (with only slight exaggeration), EVERYBODY knows that Superfund doesn't work, because ALL the money goes to lawyers and NOTHING gets done.

In summary, it shouldn't take a report from a study commission before you get rid of such a worthless, unworkable, unfair, and unAmerican legal concept.

With respect to the voluntary cleanup program in SB382, I am concerned that landowners who are aware of an environmental problem on their land will be deterred in coming forward by the clause in Section 5 (3) indicating that they will get a bill from the State for some unknown amount if they submit a plan for voluntary cleanup. In fact, that provision strikes me as bizarre and counter-productive. The best approach to cleanup would be for Congress to change Superfund into a block grant program that would provide state agencies with the resources to clean up and reclaim sites, according to local priorities and concerns.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources
DATE 3-31-95

COMMITTEE

BILL NO.

SB 382

SPONSOR(S)

Senator Hays

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Allen Berkley	Colcumbria Falls Aluminum Co.			X
John P Davis	ARCO			X
WANDRA WASH	ARCO			X
WALLY BELL	Montana Powder & EQ			X
Les Berry	mma			X
Ted Lange	NPRC		neutral	
Bill Allen	MT Audubon			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on April 5, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: SB 382 Be Concurred In As Amended
SB 366 Be Concurred In As Amended

Tape 1, Side A

EXECUTIVE ACTION ON SB 382

Motion: REP. BILL TASH MOVED SB 382 BE CONCURRED IN.

Motion: REP. TASH MOVED SEN. HARP'S AMENDMENTS TO SB 382.

Discussion:

REP. TASH reviewed the amendments with the committee. EXHIBIT 1
REP. TASH withdrew his motion on the amendments until more copies could be made.

Motion: REP. JON ELLINGSON MOVED HIS AMENDMENTS TO SB 382.

Discussion:

REP. ELLINGSON explained his amendments. EXHIBIT 2

REP. TASH asked REP. ELLINGSON if he had discussed the amendments with SEN. HARP and the Department of Health and Environmental Sciences (DHES). REP. ELLINGSON said he hadn't because the amendments were more for clarification. REP. TASH questioned the necessity of amendment 1 because the word there is reference to local government on page 15, line 15 of the bill. REP. ELLINGSON said the amendments were suggested by the local health officer in Missoula because he was concerned that the local governments would be left out of the process.

REP. TASH asked Mr. Bob Robinson, Director, DHES, for his comments on the amendments. Mr. Robinson said the department wouldn't oppose the amendments, but didn't necessarily support them. If "local" was inserted in page 15, line 2, the department would have to consider local standards when it considered its cleanup remedy. It wouldn't necessarily bring local government into the decision making process. REP. TASH asked Mr. Robinson if there would be any primacy concerns if local standards were different than state standards. Mr. Robinson said he didn't think there would be any primacy concerns. The department would find out if the local government had an environmental standard that would be affected.

REP. AUBYN CURTISS said she was against the amendment because it expands the scope of the bill and should be approved by the sponsor.

REP. TASH asked Leo Berry, Attorney, Montana Mining Association, how he interpreted REP. ELLINGSON's amendment 4. Mr. Berry said amendment 4 makes a substantial change in the bill and the proponents wouldn't support it. Amendment 3 is repetitious, but there wouldn't necessarily be any objection to it.

REP. TASH said he was against REP. ELLINGSON's amendments, particularly amendment 4 because it appears to defeat the purpose of SB 382.

REP. ELLINGSON asked Mr. Berry if he had any problems with the first three amendments. Mr. Berry said he did. Currently, the local governments do not have input in the Superfund process at either the federal or state level. The bill provides that input. By adding "local" there could be many different local requirements depending on the municipality.

Tape 1, Side B

Motion: Voice vote was taken. Motion on REP. ELLINGSON's amendment failed 11 to 6.

Motion: REP. ELLINGSON MOVED AN AMENDMENT TO SB 382.

Discussion:

REP. ELLINGSON explained the amendment. EXHIBIT 3

Vote: Voice vote was taken. Motion carried unanimously.

Motion: REP. TASH MOVED SEN. HARP'S AMENDMENTS TO SB 382.

Discussion:

Martha Colhoun, EQC, explained the amendments. (See Exhibit 1)

REP. LILA TAYLOR asked Mr. Robinson if the Board of Health and Environmental Sciences will still exist after the reorganization. Mr. Robinson said the board won't exist. The board's functions will be carried out by the Board of Environmental Review and will be attached to the new Department of Environmental Quality.

REP. BOB RANEY referred to the amendment on page 3 (d) "relevant indications of anticipated land use from the owner of the facility and local planning officials." REP. RANEY said he was concerned about the adjacent land owners who also have anticipated land use and would have a lot to do with how well the site was cleaned up. They should also be considered. "Area land owners" should be added. REP. TASH said area land owners are already included in the permit criteria. Adjacent land would be protected in regards to any remedial actions. REP. RANEY agreed that the land would be protected, but the land value wouldn't be protected. The value of adjacent land is highly determined by the level of the cleanup of the polluted property and adjacent land owners will not have any input.

REP. ROBERT STORY said he didn't agree with REP. RANEY's reasoning because any level of cleanup would be better than before and would have to improve the property value of adjacent land owners.

Vote: Voice vote was taken. Motion on SEN. HARP'S amendments carried unanimously.

Motion: REP. TASH MOVED SB 382 BE CONCURRED IN AS AMENDED.

Tape 2, Side A

Discussion:

REP. EWER asked Mr. Robinson if he would object to adding a four year sunset provision to the bill. Mr. Robinson said the department discussed a sunset provision, but decided that if there were serious problems, the department would try to get them fixed during the 1997 legislative session.

REP. RANEY said the purpose of the bill is to make it cheaper to clean up a polluted site and to clean up on a lesser level. Citizens should be able to appeal a voluntary cleanup. The citizen's participation in the whole process has been significantly reduced intentionally. The consensus group that drew up all the amendments was compiled of the department and the proponents. There were no opponents through the entire process of the bill. REP. TASH said there was an opponent during the hearing, but the opponent seemed to automatically oppose the bill without any merit. A proponent, who was a Butte attorney dealing with environmental laws, made the statement that there are many sites that are environmental nightmares in the state, including some of the patented mining claims and without the incentive to clean up those sites, nothing will be done.

Motion: REP. EWER MOVED AN AMENDMENT TO INCLUDE A SUNSET PROVISION ENDING JANUARY 1, 1999, IN SB 382.

Discussion:

REP. EWER said he would support the bill if the sunset amendment passes.

REP. TASH said at the risk of losing REP. EWER's support, he resisted the amendment. A sunset provision would dilute some of the incentive to clean up sites.

REP. STORY asked REP. EWER if the bill were to sunset in four years would the people that had clean-up plans have to redo them or would they be grandfathered in. REP. EWER said the sunset wouldn't necessarily have to be for four years, it could be for six years to allow more time for those individuals to complete their cleanup process. The people that were still involved in the cleanup process would be grandfathered in under the sunset law.

Substitute Motion: REP. EWER MOVED AN AMENDMENT TO INCLUDE A SUNSET PROVISION WITH A GRANDFATHER CLAUSE, ENDING JANUARY 1, 2001 IN THE BILL.

Discussion:

REP. SCOTT ORR said he was against the sunset amendment. If the proponents to the bill, feel the bill isn't working, they will seek to remedy any problems with another bill.

REP. TASH said he was against the amendment for the same reasons that REP. ORR stated.

REP. STORY agreed with the amendment.

REP. DANIEL FUCHS said he was in favor of the amendment.

Tape 2, Side B

Vote: Roll call vote was taken. REP. EWER's substitute motion carried 11 to 7.

Motion: REP. EWER MOVED SB 382 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried 14 to 4. REP. TUSS, REP. HARPER, REP. RANEY and REP. ELLINGSON voted no.

HEARING ON SB 366

Motion: REP. KARL OHS MOVED SB 366 BE CONCURRED IN.

Discussion:

REP. HAL HARPER said there has been some concern that the bill would take the Department of Natural Resources and Conservation (DNRC) out of the Federal Energy Regulatory Commission (FERC) review process where it concerns water users and other water uses. The agreement that **Governor Racicot** will send the bill back as an amendatory veto, will solve that concern and won't have any bearing on the problem that the bill was intended to solve. Therefore, there isn't any reason to try to amend the bill.

REP. EWER said he was against the bill. There is only one project that the bill will help. That project got \$118 million worth of tax exempt bonds from the state. It is getting a lower cost of financing and is saving about two percent a year. The tax breaks on the bonds cost the taxpayers money. The original project was designed for more than 50 megawatts. There were a lot of public hearings and no opponents attended. The Facility Siting Act decides what site is best. DNRC has waived the actual site as far as the criteria in complying with the Facility Siting Act is concerned. The project hasn't shown good faith in complying with the Act. The project site is right next to Exxon and is a good site. DNRC has worked hard to get the project through the Facility Siting Act. DNRC has sited and permitted

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 4-5-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

April 6, 1995

Page 1 of 7

Mr. Speaker: We, the committee on Natural Resources report that **Senate Bill 382** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Dick Knox*
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Story

1. Title, line 5.
Strike: "DEGREE OF"
Insert: "METHOD OF SELECTING"
2. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS 75-10-701 AND"
3. Title, line 10.
Following: "~~DATE AND~~"
Insert: "AN IMMEDIATE EFFECTIVE DATE AND"
4. Title, line 10.
Strike: "AN"
Strike: "DATE"
Insert: "DATES AND A TERMINATION DATE"
5. Page 13.
Following: line 23
Insert: "

Section 1. Section 75-10-701, MCA, is amended to read:
"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

Committee Vote:
Yes 14, No 4.

SB 382

HOUSE

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Director" means the director of the department of health and environmental sciences.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(11)~~ (12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers

as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

~~(12)~~ (13) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

~~(13)~~ (14) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(14)~~ (15) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection ~~(14)(a)~~ (15)(a) to provide services relating to a remedial action.

~~(15)~~ (16) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies.""

Renumber: subsequent sections

6. Page 13, line 27.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

7. Page 19, lines 1 and 5.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

8. Page 19, line 24.

Following: "ELIGIBLE"

Strike: "TO FOLLOW"

Insert: "for"

9. Page 20, line 6.

Following: the second "ACT"

Strike: "."

Insert: "; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent."

10. Page 20, line 7.

Following: "THROUGH"

Strike: "(1)(D)"

Insert: "(1)(e)"

11. Page 20, line 16.

Following: "(4)"

Strike: "EXCEPT" through "(2), IF"

Insert: "If"

12. Page 20, line 17.

Following: "DECISION"

Insert: "to reject the filing of the application"

13. Page 20, line 18.

Following: "UNDER"

Strike: "THIS SECTION"

Insert: "subsection (1) or (3)"

Following: "MAY"

Insert: ", within 30 days of receipt of the department's written decision pursuant to [section 9],"

14. Page 20, line 19.

Following: "SCIENCES."

Insert: "In reviewing a department decision to reject an application under subsection (1) or (3), the board shall apply the standards of review specified in 2-4-704."

15. Page 20, line 21.

Following: "BOARD"

Insert: ", the department,"

16. Page 20, line 23.

Following: "7."

Insert: "A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

17. Page 21, lines 2, 4 and 17.

Strike: "6"

Insert: "7"

18. Page 21, line 23.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

19. Page 23, lines 15 and 24.

Strike: "8(1)"

Insert: "9(1)"

20. Page 23, line 30.

Following: "SATISFY THE"

Insert: "public participation"

21. Page 25, line 9.

Strike: "6"

Insert: "7"

22. Page 26, line 2.

Strike: "4(3)"

Insert: "5(3)"

23. Page 26, line 16.

Strike: "10(2)(B)"

Insert: "11(2)(b)"

24. Page 26, lines 24 through 27.

Strike: subsection (14) in its entirety

Insert: "

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct."

25. Page 27, line 9.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

26. Page 28, line 3.

Following: "FOR"

Strike: "THE"

Insert: "[insert"

Following: "IDENTIFIED"

Insert: "]"

27. Page 30, line 13.

Page 30, lines 14 and 15.

Strike: "2"

Insert: "3"

Strike: "10"

Insert: "11"

28. Page 30, line 17.

Following: "**Applicability.**"

Insert: "(1)"

29. Page 30, line 18.

Strike: "OR ADMINISTRATIVE"

30. Page 30, lines 19 through 21.

Following: "._"

Strike: "CLAIMS" on line 19 through "._" on line 21

31. Page 30.

Following: line 21

Insert: "(2) [Sections 2 through 10] apply after January 1, 2001, to voluntary cleanup plans approved by the department of health and environmental sciences between [the effective date of this act] and January 1, 2001."

32. Page 30.

Following: line 23

Insert: "

NEW SECTION. **Section 15. Termination.** [Sections 2 through 10] terminate January 1, 2001."

33. Page 30.

Following: line 23

Insert: "NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval."

-END-

SENATE BILL NO. 382

INTRODUCED BY HARP, BECK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~NATURAL RESOURCE AND ENVIRONMENTAL LAWS~~ THE DEGREE OF METHOD OF SELECTING CLEANUP REQUIRED FOR REMEDIAL ACTIONS; CREATING A VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS; REQUIRING THE DEPARTMENT TO SET UP A COLLABORATIVE PROCESS THAT ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY AND RELATED FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND SITES; AMENDING SECTIONS 15-38-202, 75-10-701, 75-10-704, 75-10-711, SECTION SECTIONS 75-10-701 AND 75-10-716, 75-10-721, 75-10-722, 75-10-724, AND 85-1-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE DATES, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 15-38-202, MCA, is amended to read:~~

~~"15-38-202. (Temporary) Investment of resource indemnity trust fund—expenditure—minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.~~

~~(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:~~

~~(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;~~

~~(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;~~

~~(iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in~~

~~17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;~~

~~(iv) \$1,025,000 to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;~~

~~(v) \$2,200,000 to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and~~

~~(vi) beginning in fiscal year 1994, \$250,000 to be deposited into the water storage state special revenue account created by 85-1-631.~~

~~(b) The remainder of the interest income is allocated as follows:~~

~~(i) Thirty-eight percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.~~

~~(ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

~~(iii) Forty-one and one-half percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

~~(iv) Five and one-half percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.~~

~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.~~

~~15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund expenditure minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund~~

1 until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and
2 expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be
3 appropriated by the legislature and expended, provided that the balance in the fund may never be less than
4 \$100 million.

5 (2) (a) At the beginning of each biennium, there is allocated from the interest income of the
6 resource indemnity trust fund:

7 (i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the
8 conditions of 75-1-1101;

9 (ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account
10 pursuant to the conditions of 82-11-161;

11 (iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in
12 17-7-502, from the renewable resource grant and loan program state special revenue account to support
13 the operations of the environmental science water quality instructional programs at northern Montana
14 college to be used for support costs, for matching funds necessary to attract additional funds to further
15 expand statewide impact, and for enhancement of the facilities related to the programs;

16 (iv) beginning in fiscal year 1996 1997, \$2 \$1 million to be deposited into the renewable resource
17 grant and loan program state special revenue account, created by 85-1-604, for the purpose of making
18 grants;

19 (v) beginning in fiscal year 1996 1997, \$3 \$2 million to be deposited into the reclamation and
20 development grants state special revenue account, created by 90-2-1104, for the purpose of making grants;
21 and

22 (vi) beginning in fiscal year 1996, \$500,000 to be deposited into the water storage state special
23 revenue account created by 85-1-631.

24 (b) The remainder of the interest income is allocated as follows:

25 (i) Thirty six ~~Sixteen~~ percent of the interest income of the resource indemnity trust fund must be
26 allocated to the renewable resource grant and loan program state special revenue account created by
27 85-1-604.

28 (ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated
29 to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

30 (iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated

1 ~~to the reclamation and development grants account provided for in 90-2-1104.~~

2 ~~(iv) Six Sixteen percent of the interest income of the resource indemnity trust fund must be~~
3 ~~allocated to the environmental quality protection fund provided for in 75-10-704.~~

4 ~~(v) Ten percent of the interest income from the resource indemnity trust fund must be allocated~~
5 ~~to the abandoned mine state special revenue account provided in [section 9].~~

6 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
7 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
8 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
9 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
10 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
11 ~~legislative appropriation process or otherwise during a legislative session."~~

12
13 **Section 2.** ~~Section 75-10-701, MCA, is amended to read:~~

14 ~~"**75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following~~
15 ~~definitions apply:~~

16 ~~(1) "Department" means the department of health and environmental sciences provided for in Title~~
17 ~~2, chapter 15, part 21.~~

18 ~~(2) "Director" means the director of the department of health and environmental sciences.~~

19 ~~(3) "Disposed" or "disposal" means:~~

20 ~~(a) an affirmative act resulting in a discharge, deposit, injection, dumping, storing, spilling, leaking,~~
21 ~~or placing of any hazardous or deleterious substance on any land or water so that the hazardous or~~
22 ~~deleterious substance may enter the environment, be emitted into the air, or be discharged into any waters,~~
23 ~~including ground waters.~~

24 ~~(b) Disposed or disposal does not include the passive migration, movement, or dispersion of a~~
25 ~~hazardous or deleterious substance or any constituent through the environment that occurs after the initial~~
26 ~~disposal of the hazardous or deleterious substance into the environment.~~

27 ~~(3)(4) "Environment" means any surface water, ground water, drinking water supply, land surface~~
28 ~~or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of~~
29 ~~Montana.~~

30 ~~(4) (a)(5) (a) "Facility" means:~~

~~(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or~~

~~(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.~~

~~(b) The term does not include any consumer product in consumer use.~~

~~(5)(6) "Fund" means the environmental quality protection fund established in 75-10-704.~~

~~(6)(7) (a) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:~~

~~(a)(i) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;~~

~~(b)(iii) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;~~

~~(c)(iii) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or~~

~~(d)(iv) any petroleum product.~~

~~(b) Hazardous or deleterious substance does not include any waste or constituent, the regulation of which under the Solid Waste Disposal Act, 42 U.S.C. 6901, has been suspended by an act of congress or that has been excluded from the definition of hazardous waste under 40 CFR 261.4(b)(7).~~

~~(7)(8) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.~~

~~(8) (a)(9) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.~~

~~(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the~~

1 facility. The term does not apply to the state or a local government that acquired ownership or control
2 through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the
3 government acquires title by virtue of its function as sovereign, unless the state or local government has
4 caused or contributed to the release or threatened release of a hazardous or deleterious substance from the
5 facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1
6 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been
7 released into the environment upstream of the dam and has subsequently come to be located in the
8 reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for
9 a release or threatened release under 75-10-715(1).

10 ~~(9)(10)~~ "Person" means an individual, trust, firm, joint stock company, joint venture, consortium,
11 commercial entity, partnership, association, corporation, commission, state or state agency, political
12 subdivision of the state, interstate body, or the federal government, including a federal agency.

13 ~~(10)(11)~~ "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
14 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any
15 other petroleum related product or waste or fraction thereof that is liquid at standard conditions of
16 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

17 ~~(11)(12)~~ "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
18 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into
19 the environment (including the abandonment or discarding of barrels, containers, and other closed
20 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the
21 indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in
22 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
23 80-10-101(2) when applied as part of accepted agricultural practice.

24 ~~(12)(13)~~ "Remedial action" includes all notification, investigation, administration, monitoring,
25 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
26 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
27 threatened release.

28 ~~(13)(14)~~ "Remedial action contract" means a written contract or agreement entered into by a
29 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
30 request issued by the department, the United States, or any federal agency, to provide a remedial action

with respect to a release or threatened release of a hazardous or deleterious substance.

~~(14)(15) "Remedial action contractor" means:~~

~~(a) any person who enters into and is carrying out a remedial action contract; or~~

~~(b) any person who is retained or hired by a person described in subsection (14)(a) (15)(a) to provide services relating to a remedial action.~~

~~(15)(16) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."~~

Section 3. ~~Section 75-10-704, MCA, is amended to read:~~

~~"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part. The use of the fund is limited to remediation of sites not listed on the national priorities list.~~

~~(2) The fund may be used by the department only to:~~

~~(a) provide the department with funding for remedial actions to the extent that parties liable under 75-10-715 cannot pay all remedial action costs required to be expended to remedy releases at a facility;~~

~~(b) reimburse liable parties whose contributions to remedial action costs exceed their proportionate liability;~~

~~(c) carry out the provisions of this part and provide for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances; and~~

~~(d) carry out the provisions of this part.~~

~~(3) The department shall:~~

~~(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and~~

~~(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.~~

~~(4) There must be deposited in the fund:~~

~~(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs~~

1 ~~recovered pursuant to 75-10-715;~~

2 ~~(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed~~
3 ~~pursuant to 75-10-711(5);~~

4 ~~(c) funds appropriated to the fund by the legislature; and~~

5 ~~(d) funds received from the interest income of the resource indemnity trust fund pursuant to~~
6 ~~15-38-202.~~

7 ~~(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and~~
8 ~~additional money remains in the fund, the department shall seek additional authority to spend money from~~
9 ~~the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.~~

10 ~~(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the~~
11 ~~department may apply to the governor for a grant from the environmental contingency account established~~
12 ~~pursuant to 75-1-1101."~~

13
14 **Section 4. Section 75-10-711, MCA, is amended to read:**

15 ~~"75-10-711. Remedial action orders penalties judicial proceedings. (1) The department may~~
16 ~~take remedial action whenever:~~

17 ~~(a) there has been a release or there is a substantial threat of a release into the environment that~~
18 ~~may present an imminent and substantial endangerment to the public health, welfare, or safety or the~~
19 ~~environment; and~~

20 ~~(b) the appropriate remedial action will not be done properly and expeditiously by any person liable~~
21 ~~under 75-10-715(1).~~

22 ~~(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to~~
23 ~~believe that a release has occurred or is about to occur, the department may undertake remedial action in~~
24 ~~the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by~~
25 ~~75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the~~
26 ~~release or the threat of release and the extent and imminence of the danger to the public health, safety,~~
27 ~~or welfare or the environment.~~

28 ~~(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and~~
29 ~~abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund~~
30 ~~to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the~~

1 ~~person or persons liable for the release or threatened release and:~~

2 ~~(a) is unable to determine the identity of the liable person or persons in a manner consistent with~~

3 ~~the need to take timely remedial action; or~~

4 ~~(b) the person or persons determined by the department to be liable under 75-10-715(1) have been~~

5 ~~informed in writing of the department's determination and have been requested by the department to take~~

6 ~~appropriate remedial action but are unable or unwilling to take action in a timely manner; and~~

7 ~~(c) the written notice to each person informs him that person that if he the person is subsequently~~

8 ~~found liable pursuant to 75-10-715(1), he the person may be required to reimburse the fund for the state's~~

9 ~~remedial action costs and may be subject to penalties pursuant to 75-10-715(3).~~

10 ~~(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to~~

11 ~~believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare~~

12 ~~or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1)~~

13 ~~cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health,~~

14 ~~safety, or welfare or the environment.~~

15 ~~(5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707~~

16 ~~or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than~~

17 ~~\$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining~~

18 ~~the amount of any penalty assessed, the court may take into account:~~

19 ~~(i) the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the~~

20 ~~person liable under 75-10-715(1), his the person's ability to pay;~~

21 ~~(ii) any prior history of such violations;~~

22 ~~(iii) the degree of culpability;~~

23 ~~(iv) the economic benefit or savings, if any, resulting from the noncompliance; and~~

24 ~~(v) any other matters as that justice may require.~~

25 ~~(b) Civil penalties collected under this subsection must be deposited into the environmental quality~~

26 ~~protection fund established in 75-10-704.~~

27 ~~(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the~~

28 ~~following actions:~~

29 ~~(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;~~

30 ~~(b) an action to enforce an order issued under 75-10-707 or this section;~~

1 ~~(c) an action to recover a civil penalty for violation of or failure to comply with an order issued~~
2 ~~under 75-10-707 or this section; or~~

3 ~~(d) an action by a person to whom an order has been issued to determine the validity of the order,~~
4 ~~only if the person has been in compliance and continues in compliance with the order pending decision of~~
5 ~~the court.~~

6 ~~(7) In considering objections raised in a judicial action regarding orders issued under this part, the~~
7 ~~court shall uphold and enforce an order issued by the department unless the objecting party can~~
8 ~~demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary~~
9 ~~and capricious or otherwise not in accordance with law.~~

10 ~~(8) Instead of issuing a notification or an order under this section, the department may bring an~~
11 ~~action for legal or equitable relief in the district court of the county where the release or threatened release~~
12 ~~occurred or in the first judicial district as may be necessary to abate any imminent and substantial~~
13 ~~endangerment to the public health, safety, or welfare or the environment resulting from the release or~~
14 ~~threatened release.~~

15 ~~(9) The Except as provided in 75-10-712, the department may not take remedial action pursuant~~
16 ~~to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response,~~
17 ~~Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial~~
18 ~~action is necessary to carry out the purposes of this part as amended. This subsection may not restrict the~~
19 ~~department from entering into or carrying out cooperative agreements under Title 75, chapter 10, part 6,~~
20 ~~or from accepting any deferral to the state of a CERCLA site from the U.S. environmental protection~~
21 ~~agency.~~"

22
23 **Section 5.** Section 75-10-715, MCA, is amended to read:

24 ~~"75-10-715. Liability reimbursement and penalties proceedings defenses. (1)~~
25 ~~Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (5),~~
26 ~~the following persons are jointly and severally liable for a release or threatened release of a hazardous or~~
27 ~~deleterious substance from a facility:~~

28 ~~(a) a person who owns or operates a facility where a hazardous or deleterious substance was~~
29 ~~disposed of;~~

30 ~~(b)(a) a person who at the time of disposal of a hazardous or deleterious substance owned or~~

1 ~~operated a facility where the hazardous or deleterious substance was disposed of;~~

2 ~~(c)(b) a person who generated, possessed, or was otherwise responsible for a hazardous or~~
3 ~~deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment~~
4 ~~of the substance or arranged with a transporter for transport of the substance for disposal or treatment;~~
5 ~~and~~

6 ~~(d)(c) a person who accepts or has accepted a hazardous or deleterious substance for transport~~
7 ~~to a disposal or treatment facility.~~

8 ~~(2) A person identified in subsection (1) is proportionately liable for the following costs:~~

9 ~~(a) all remedial action costs incurred by the state; and~~

10 ~~(b) damages for injury to, destruction of, or loss of natural resources caused by the release or~~
11 ~~threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim~~
12 ~~for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were~~
13 ~~specifically identified as an irreversible and irretrievable commitment of natural resources in an approved~~
14 ~~final state or federal environmental impact statement or other comparable approved final environmental~~
15 ~~analysis for a project or facility that was the subject of a governmental permit or license and the project~~
16 ~~or facility was being operated within the terms of its permit or license.~~

17 ~~(3) If the person liable under 75-10-715(1) fails, without sufficient cause, to comply with a~~
18 ~~department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification~~
19 ~~by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to~~
20 ~~exceed two times the amount of any costs incurred by the state pursuant to this section.~~

21 ~~(4) The department may initiate civil proceedings in district court to recover remedial action costs,~~
22 ~~natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs~~
23 ~~and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs,~~
24 ~~damages, or penalties lies in the county where the release occurred or where the any person liable under~~
25 ~~75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.~~

26 ~~(5) No A person is not liable under subsections (1) through (3) if that person can establish by a~~
27 ~~preponderance of the evidence that:~~

28 ~~(a) the department failed to follow the notice provisions of 75-10-711 when required;~~

29 ~~(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed~~
30 ~~any hazardous or deleterious substance or over which the person had any ownership, authority, or control~~

1 ~~and was not caused by any action or omission of the person;~~

2 ~~(c) the release or threatened release occurred solely as a result of:~~

3 ~~(i) an act or omission of a third party other than either an employee or agent of the person; or~~

4 ~~(ii) an act or omission of a third party other than one whose act or omission occurs in connection~~
5 ~~with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by~~
6 ~~a preponderance of the evidence that he the person;~~

7 ~~(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking~~
8 ~~into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts~~
9 ~~and circumstances; and~~

10 ~~(B) took precautions against foreseeable acts or omissions of a third party and the consequences~~
11 ~~that could foreseeably result from those acts or omissions;~~

12 ~~(d) the release or threat of release occurred solely as the result of an act of God or an act of war;~~

13 ~~(e) the release or threatened release was from a facility for which a permit had been issued by the~~
14 ~~department, the hazardous or deleterious substance was specifically identified in the permit, and the release~~
15 ~~was within the limits allowed in the permit;~~

16 ~~(f) in the case of assessment of penalties under subsection (3), that factors beyond the control of~~
17 ~~the person prevented the person from taking timely remedial action; or~~

18 ~~(g) the person accepted only household refuse (garbage, trash, or septic tank sanitary wastes~~
19 ~~generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to~~
20 ~~a solid waste disposal facility, unless that person knew or reasonably should have known that the~~
21 ~~hazardous or deleterious substance was present in the refuse.~~

22 ~~(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is~~
23 ~~not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real~~
24 ~~property on which the facility is located was acquired by the person after the disposal or placement of the~~
25 ~~hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances~~
26 ~~is also established by the person by a preponderance of the evidence:~~

27 ~~(i) At the time the person acquired the facility, the person did not know and had no reason to know~~
28 ~~that a hazardous or deleterious substance that is the subject of the release or threatened release was~~
29 ~~disposed of on, in, or at the facility.~~

30 ~~(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or~~

1 through any other involuntary transfer or acquisition or through the exercise of eminent domain authority
2 by purchase or condemnation.

3 ~~(iii) The person acquired the facility by inheritance or bequest.~~

4 ~~(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through~~
5 ~~(6)(a)(iii), the person shall establish that he has satisfied the requirements of subsections (5)(c)(i) or~~
6 ~~(5)(c)(ii).~~

7 ~~(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the~~
8 ~~person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership~~
9 ~~and uses of the property consistent with good commercial or customary practice in an effort to minimize~~
10 ~~liability. For purposes of assessing this inquiry, the following must be taken into account:~~

- 11 ~~(i) any specialized knowledge or experience on the part of the person;~~
12 ~~(ii) the relationship of the purchase price to the value of the property if uncontaminated;~~
13 ~~(iii) commonly known or reasonably ascertainable information about the property;~~
14 ~~(iv) the obviousness of the presence or the likely presence of contamination on the property; and~~
15 ~~(v) the ability to detect the contamination by appropriate inspection.~~

16 ~~(d)(a) (i) Nothing in subsections (5)(b) and (5)(c) or in this subsection (6) may diminish the liability~~
17 ~~of a previous owner or operator of the facility who would otherwise be liable under this part.~~

18 ~~(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge~~
19 ~~of the release or threatened release of a hazardous or deleterious substance at the facility when the person~~
20 ~~owned the real property and then subsequently transferred ownership of the property to another person~~
21 ~~without disclosing the knowledge, the previous owner is liable under subsections (1) through (3) and no~~
22 ~~defense under subsection (5)(b) or (5)(c) is available to that person.~~

23 ~~(e)(b) Nothing in this subsection (6) affects the liability under this part of a person who, by any act~~
24 ~~or omission, caused or contributed to the release or threatened release of a hazardous or deleterious~~
25 ~~substance that is the subject of the action relating to the facility."~~

26
27 **SECTION 1. SECTION 75-10-701, MCA, IS AMENDED TO READ:**

28 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following
29 definitions apply:

- 30 (1) "Department" means the department of health and environmental sciences provided for in Title

1 2, chapter 15, part 21.

2 (2) "Director" means the director of the department of health and environmental sciences.

3 (3) "Environment" means any surface water, ground water, drinking water supply, land surface
4 or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of
5 Montana.

6 (4) (a) "Facility" means:

7 (i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer
8 or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container,
9 motor vehicle, rolling stock, or aircraft; or

10 (ii) any site or area where a hazardous or deleterious substance has been deposited, stored,
11 disposed of, placed, or otherwise come to be located.

12 (b) The term does not include any consumer product in consumer use.

13 (5) "Fund" means the environmental quality protection fund established in 75-10-704.

14 (6) "Hazardous or deleterious substance" means a substance that because of its quantity,
15 concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial
16 threat to public health, safety, or welfare or the environment and is:

17 (a) a substance that is defined as a hazardous substance by section 101(14) of the federal
18 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14),
19 as amended;

20 (b) a substance identified by the administrator of the United States environmental protection
21 agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

22 (c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource
23 Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or
24 identified in 40 CFR 261; or

25 (d) any petroleum product.

26 (7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking
27 water supplies, and any other such resources within the state of Montana owned, managed, held in trust
28 or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

29 (8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising
30 control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(11)~~(12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in

1 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
2 80-10-101(2) when applied as part of accepted agricultural practice.

3 ~~(12)~~(13) "Remedial action" includes all notification, investigation, administration, monitoring,
4 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
5 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
6 threatened release.

7 ~~(13)~~(14) "Remedial action contract" means a written contract or agreement entered into by a
8 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
9 request issued by the department, the United States, or any federal agency, to provide a remedial action
10 with respect to a release or threatened release of a hazardous or deleterious substance.

11 ~~(14)~~(15) "Remedial action contractor" means:

12 (a) any person who enters into and is carrying out a remedial action contract; or

13 (b) any person who is retained or hired by a person described in subsection ~~(14)(a)~~ (15)(a) to
14 provide services relating to a remedial action.

15 ~~(15)~~(16) "Remedial action costs" means reasonable costs that are attributable to or associated with
16 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal
17 or enforcement activities, contracts, feasibility studies, or health studies."

18
19 **Section 2.** Section 75-10-721, MCA, is amended to read:

20 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A remedial
21 action performed under this part or a voluntary cleanup under [sections 10 2 3 through 16 10 11] must
22 attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release
23 or further release of that substance that assures ~~present and future~~ protection of public health, safety, and
24 welfare and of the environment ~~that is consistent with this section.~~

25 (2) In approving or carrying out remedial actions performed under this part, the department:

26 ~~(a) shall require cleanup consistent with applicable state or federal environmental requirements,~~
27 ~~criteria, or limitations;~~

28 ~~(b) shall consider and may require cleanup consistent with substantive state or federal~~
29 ~~environmental requirements, criteria, or limitations that are well suited to the site conditions; and~~

30 ~~(c) shall select remedial actions that, at a minimum, protect the public health, safety, and welfare~~

1 ~~and the environment. A remedial action must be considered protective of the public health, safety, and~~
2 ~~welfare and of the environment when the amount of site specific risk reduction is proportionate to the total~~
3 ~~cost of the remedial action or when the remedial action reaches a level of risk reduction of 10 to the minus~~
4 ~~4, whichever is more cost effective, and that:~~

- 5 ~~(i) use permanent solutions;~~
- 6 ~~(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent~~
7 ~~practicable; and~~
- 8 ~~(iii) are cost effective, taking into account the total short and long term costs of the actions,~~
9 ~~including the cost of operation and maintenance activities for the entire period during which the activities~~
10 ~~will be required.~~

11 ~~(3) To the extent consistent with the requirements of subsection (2), the department, in selecting~~
12 ~~remedial actions under this part, shall consider for each remedial action:~~

- 13 ~~(a) technical practicability;~~
- 14 ~~(b) long term and short term reliability; and~~
- 15 ~~(c) local community and local government acceptance.~~

16 ~~(4) To the extent consistent with the requirements of subsection (2), the department shall give~~
17 ~~equal consideration to engineering controls, institutional controls, and treatment.~~

18 ~~(5) All remedial actions selected by the department under this part must be based on current land~~
19 ~~and resource uses unless the department can demonstrate on the administrative record that there are~~
20 ~~reasonably anticipated uses that would require remedial actions that provide for a higher level of protection~~
21 ~~for the public health, safety, and welfare, and for the environment. Only reasonably anticipated land and~~
22 ~~resource uses, as determined by applicable local land and resource use requirements, regulations,~~
23 ~~ordinances, restrictions or covenants, may be considered.:~~ (A) EXCEPT AS PROVIDED IN SUBSECTION (4),
24 ~~SHALL REQUIRE CLEANUP CONSISTENT WITH APPLICABLE STATE OR FEDERAL ENVIRONMENTAL~~
25 ~~REQUIREMENTS, CRITERIA, OR LIMITATIONS;~~

26 ~~(B) MAY CONSIDER SUBSTANTIVE STATE OR FEDERAL ENVIRONMENTAL REQUIREMENTS,~~
27 ~~CRITERIA, OR LIMITATIONS THAT ARE RELEVANT TO THE SITE CONDITIONS; AND~~

28 ~~(C) SHALL SELECT REMEDIAL ACTIONS, CONSIDERING PRESENT AND REASONABLY~~
29 ~~ANTICIPATED FUTURE USES, THAT:~~

- 30 ~~(I) DEMONSTRATE ACCEPTABLE MITIGATION OF EXPOSURE TO RISKS TO THE PUBLIC HEALTH,~~

1 SAFETY, AND WELFARE AND THE ENVIRONMENT;

2 (II) ARE EFFECTIVE AND RELIABLE IN THE SHORT TERM AND THE LONG TERM;

3 (III) ARE TECHNICALLY PRACTICABLE AND IMPLEMENTABLE;

4 (IV) USE TREATMENT TECHNOLOGIES OR RESOURCE RECOVERY TECHNOLOGIES IF
5 PRACTICABLE, GIVING DUE CONSIDERATION TO INSTITUTIONAL AND ENGINEERING CONTROLS; AND

6 (V) ARE COST-EFFECTIVE.

7 (3) IN SELECTING REMEDIAL ACTIONS, THE DEPARTMENT SHALL CONSIDER THE
8 ACCEPTABILITY OF THE ACTIONS TO THE AFFECTED COMMUNITY, AS INDICATED BY COMMUNITY
9 MEMBERS AND THE LOCAL GOVERNMENT.

10 (4) THE DEPARTMENT MAY SELECT A REMEDIAL ACTION THAT DOES NOT MEET AN
11 APPLICABLE STATE ENVIRONMENTAL REQUIREMENT, CRITERIA, OR LIMITATION UNDER ANY ONE OF
12 THE FOLLOWING CIRCUMSTANCES:

13 (A) THE REMEDIAL ACTION IS AN INTERIM MEASURE AND WILL BECOME PART OF A TOTAL
14 REMEDIAL ACTION THAT WILL ATTAIN THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION.

15 (B) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION WILL
16 RESULT IN GREATER RISK TO HUMAN HEALTH AND THE ENVIRONMENT THAN OTHER REMEDIAL
17 ACTION ALTERNATIVES.

18 (C) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION IS
19 TECHNICALLY IMPRACTICABLE FROM AN ENGINEERING PERSPECTIVE.

20 (D) THE REMEDIAL ACTION WILL ATTAIN A STANDARD OF PERFORMANCE THAT IS
21 EQUIVALENT TO THAT REQUIRED UNDER THE OTHERWISE APPLICABLE REQUIREMENT, CRITERIA, OR
22 LIMITATION THROUGH USE OF ANOTHER METHOD OR APPROACH.

23 (E) COMPLIANCE WITH THE REQUIREMENT WOULD NOT BE COST-EFFECTIVE.

24 (5) FOR PURPOSES OF THIS SECTION, COST-EFFECTIVENESS MUST BE DETERMINED THROUGH
25 AN ANALYSIS OF INCREMENTAL COSTS AND INCREMENTAL RISK REDUCTION AND OTHER BENEFITS
26 OF ALTERNATIVES CONSIDERED, TAKING INTO ACCOUNT THE TOTAL ANTICIPATED SHORT-TERM AND
27 LONG-TERM COSTS OF REMEDIAL ACTION ALTERNATIVES CONSIDERED, INCLUDING THE TOTAL
28 ANTICIPATED COST OF OPERATION AND MAINTENANCE ACTIVITIES.

29 ~~(3)(6)~~ The department ~~may shall~~ MAY exempt any portion of a remedial action that is conducted
30 entirely on site from a state or local permit that would, in the absence of the remedial action, be required

1 if the remedial action is carried out in accordance with the standards established under ~~subsection (1)~~ THIS
2 SECTION and this part.

3 ~~(4)(7)~~ The department may require financial assurance from a liable person in an amount that the
4 department determines will ensure the long-term operation and maintenance of the remedial action site.
5 The liable person shall provide the financial assurance by any one method or combination of methods
6 satisfactory to the department, including but not limited to insurance, guarantee, performance or other
7 surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."
8

9 **~~Section 7.~~** ~~Section 75-10-722, MCA, is amended to read:~~

10 ~~"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the~~
11 ~~state's remedial action costs.~~

12 ~~(2) Based on this record, the department shall may require a person liable under 75-10-715 to pay~~
13 ~~the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).~~

14 ~~(3) If the state's remedial action costs and penalties are not paid by the liable person to the~~
15 ~~department within 60 days after receipt of notice that the costs and penalties are due, the department shall~~
16 ~~bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.~~

17 ~~(4) An action to recover remedial action costs may be brought under this section at any time after~~
18 ~~any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability~~
19 ~~for remedial action costs that is binding on any subsequent action or actions to recover further remedial~~
20 ~~action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show~~
21 ~~on the record that the costs are not reasonable and are not consistent with this part.~~

22 ~~(5) An initial action for recovery of remedial action costs must be commenced within 6 years after~~
23 ~~initiation of physical onsite construction of the remedial action.~~

24 ~~(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be~~
25 ~~deposited into the environmental quality protection fund established in 75-10-704."~~

26
27 **~~Section 8.~~** ~~Section 75-10-724, MCA, is amended to read:~~

28 ~~"75-10-724. Liability apportionment and contribution. (1) Any person held jointly and severally~~
29 ~~liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties~~
30 ~~as provided in this section. The burden is on each liable person to show how his liability should be~~

1 appertioned. In appertioning the liability of any person under this section, the trier of fact shall consider
2 ~~In any action initiated under 75 10 715 by the department or in any action initiated under subsection (2)~~
3 ~~by any person or persons liable under 75 10 715(1), the trier of fact shall determine the proportionate share~~
4 ~~of the aggregate liability for each person who is found liable under 75 10 715(1). For purposes of~~
5 ~~determining the proportionate share of the aggregate liability, the trier of fact shall consider, for each person~~
6 ~~found liable under 75 10 715(1), the following:~~

7 (a) ~~the extent to which the each person's contribution to the release of a hazardous or deleterious~~
8 ~~substance can be distinguished;~~

9 (b) ~~the amount of hazardous or deleterious substance involved;~~

10 (c) ~~the degree of toxicity of the hazardous or deleterious substance involved;~~

11 (d) ~~the degree of involvement of and care exercised by the each person in manufacturing, treating,~~
12 ~~transporting, or disposing of the hazardous or deleterious substance;~~

13 (e) ~~the degree of cooperation by the each person with federal, state, or local officials to prevent~~
14 ~~any harm to the public health, safety, or welfare or the environment; and~~

15 (f) ~~knowledge by the each person of the hazardous nature of the substance; and~~

16 (g) ~~any remedial actions voluntarily taken by a person.~~

17 (2) ~~If a person is held jointly and severally liable under 75 10 715 and establishes a proportionate~~
18 ~~share of the aggregate liability, the person has the right of contribution from any other liable person. If for~~
19 ~~any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of~~
20 ~~the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid~~
21 ~~portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action~~
22 ~~for contribution from the noncontributing person. A person liable under 75 10 715(1) may have a right of~~
23 ~~contribution for the recovery of the remedial action costs incurred by a person under this part against any~~
24 ~~other nonsettling party found liable under 75 10 715(1) in the proportionate shares determined under~~
25 ~~subsection (1).~~

26 (3) ~~For sites not listed on the national priorities list, if for any reason all or part of the contribution~~
27 ~~from a person liable for contribution cannot be obtained, a person may apply to and must, in accordance~~
28 ~~with this subsection, receive reimbursement from the department from the environmental quality protection~~
29 ~~fund established in 75 10 704. If the environmental quality protection fund does not contain sufficient~~
30 ~~money to pay received claims for reimbursement, the fund and the department are not liable for making any~~

1 ~~reimbursement at that time. When the fund contains sufficient money, approved claims must be~~
2 ~~subsequently reimbursed in the order in which they were approved by the department. The department~~
3 ~~shall approve claims for reimbursement of remedial action costs under this subsection unless the remedial~~
4 ~~action costs are unreasonable, unnecessary, or inconsistent with this part.~~

5 ~~(4) A person who has incurred remedial action costs may seek to recover those costs from any~~
6 ~~person who is liable or potentially liable under 75-10-715. A person who is liable under this subsection is~~
7 ~~not liable for more than the person's proportionate share of the aggregate liability determined in accordance~~
8 ~~with the criteria in subsection (1). Subsections (3) and (4) of 75-10-714 apply to any actions under this~~
9 ~~subsection."~~

10
11 ~~**NEW SECTION. Section 9. Abandoned mine state special revenue account created.** (1) There is~~
12 ~~an abandoned mine special revenue account within the state special revenue account fund established in~~
13 ~~17-2-102.~~

14 ~~(2) There must be paid into the abandoned mine state special revenue account money allocated~~
15 ~~from the resource indemnity trust fund interest earnings pursuant to 15-38-202.~~

16 ~~(3) Money that was not encumbered or expended from the abandoned mine state special revenue~~
17 ~~account during the previous biennium must remain in the account.~~

18 ~~(4) Deposits to the abandoned mine state special revenue account are to be placed in short term~~
19 ~~investments and accrue interest, which must be deposited in the abandoned mine state special revenue~~
20 ~~account.~~

21 ~~(5) The purpose of the abandoned mine state special revenue account is to provide the funding to~~
22 ~~the department of state lands for the cleanup and reclamation of abandoned mines.~~

23 ~~(6) The department of state lands shall administer this section as an integral part of the abandoned~~
24 ~~mines program.~~

25
26 ~~**NEW SECTION. Section 3. Short title.** [Sections 10-2-3 through 16-10-11] may be cited as the~~
27 ~~"Voluntary Cleanup and Redevelopment Act".~~

28
29 ~~**NEW SECTION. Section 4. Purpose -- legislative declaration.** (1) (a) The purposes of [sections~~
30 ~~10-2-3 through 16-10-11] are to provide for the protection of the public health, welfare, and safety and~~

1 of the environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities ~~and sites that~~
2 ~~have been previously contaminated with hazardous or deleterious substances~~ WHERE RELEASES OR
3 THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST.

4 (b) The legislature further declares that this program is intended to permit and encourage voluntary
5 cleanup of ~~contaminated property~~ FACILITIES WHERE RELEASES OR THREATENED RELEASES OF
6 HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST by providing interested persons with a method of
7 determining what the cleanup responsibilities will be for reuse or redevelopment of existing ~~sites~~
8 FACILITIES.

9 (2) The legislature further intends that this voluntary program:

10 (a) encourage and facilitate prompt cleanup activities;

11 (b) eliminate impediments to the sale or redevelopment of ~~previously contaminated property~~
12 FACILITIES WHERE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
13 SUBSTANCES EXIST; and

14 (c) minimize administrative processes and costs.

15
16 NEW SECTION. SECTION 5. ELIGIBILITY. (1) A FACILITY WHERE THERE HAS BEEN A RELEASE
17 OR THREATENED RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE THAT MAY PRESENT AN
18 IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR
19 THE ENVIRONMENT MAY BE ELIGIBLE TO FOLLOW FOR VOLUNTARY CLEANUP PROCEDURES UNDER
20 THIS PART, EXCEPT FOR FACILITIES THAT MEET ONE OF THE FOLLOWING CRITERIA AT THE TIME OF
21 APPLICATION FOR A VOLUNTARY CLEANUP PLAN:

22 (A) A FACILITY THAT IS LISTED OR PROPOSED FOR LISTING ON THE NATIONAL PRIORITIES LIST
23 PURSUANT TO 42 U.S.C. 9601, ET SEQ.;

24 (B) A FACILITY FOR WHICH AN ORDER HAS BEEN ISSUED OR CONSENT DECREE HAS BEEN
25 ENTERED INTO PURSUANT TO THIS PART;

26 (C) A FACILITY THAT IS THE SUBJECT OF AN AGENCY ORDER OR AN ACTION FILED IN
27 DISTRICT COURT BY ANY STATE AGENCY THAT ADDRESSES THE RELEASE OR THREATENED RELEASE
28 OF A HAZARDOUS OR DELETERIOUS SUBSTANCE; OR

29 (D) A FACILITY WHERE THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS OR
30 DELETERIOUS SUBSTANCE IS REGULATED BY THE MONTANA HAZARDOUS WASTE AND

1 UNDERGROUND STORAGE TANK ACT AND REGULATIONS UNDER THAT ACT; OR

2 (E) A FACILITY THAT IS THE SUBJECT OF PENDING ACTION UNDER THIS PART BECAUSE THE
3 FACILITY HAS BEEN ISSUED A NOTICE COMMENCING A SPECIFIED PERIOD OF NEGOTIATIONS ON AN
4 ADMINISTRATIVE ORDER ON CONSENT.

5 (2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1)(B) THROUGH (1)(D) (1)(E), THE
6 DEPARTMENT MAY AGREE TO ACCEPT AND MAY APPROVE AN APPLICATION FOR A VOLUNTARY
7 CLEANUP PLAN FOR A FACILITY.

8 (3) THE DEPARTMENT MAY DETERMINE THAT A FACILITY THAT IS POTENTIALLY ELIGIBLE FOR
9 VOLUNTARY CLEANUP EXHIBITS COMPLEXITIES REGARDING PROTECTION OF PUBLIC HEALTH,
10 SAFETY, AND WELFARE AND THE ENVIRONMENT AND THAT THE COMPLEXITIES SHOULD BE
11 ADDRESSED UNDER AN ADMINISTRATIVE ORDER OR CONSENT DECREE PURSUANT TO THIS PART.
12 THIS DETERMINATION MAY BE MADE ONLY AFTER CONSULTATION WITH ANY PERSON DESIRING TO
13 CONDUCT A VOLUNTARY CLEANUP AT THE FACILITY.

14 (4) ~~EXCEPT AS PROVIDED IN SUBSECTION (2), IF~~ IF AN APPLICANT THAT SUBMITS AN
15 APPLICATION FOR A VOLUNTARY CLEANUP PLAN DISAGREES WITH THE DEPARTMENT'S DECISION
16 TO REJECT THE FILING OF THE APPLICATION UNDER THIS SECTION SUBSECTION (1) OR (3), THE
17 APPLICANT MAY, WITHIN 30 DAYS OF RECEIPT OF THE DEPARTMENT'S WRITTEN DECISION
18 PURSUANT TO [SECTION 9], SUBMIT A WRITTEN REQUEST FOR A HEARING BEFORE THE BOARD OF
19 HEALTH AND ENVIRONMENTAL SCIENCES. IN REVIEWING A DEPARTMENT DECISION TO REJECT AN
20 APPLICATION UNDER SUBSECTION (1) OR (3), THE BOARD SHALL APPLY THE STANDARDS OF REVIEW
21 SPECIFIED IN 2-4-704. THE HEARING MUST BE HELD WITHIN 2 MONTHS AT THE REGULAR MEETING
22 OF THE BOARD OR AT THE TIME MUTUALLY AGREED TO BY THE BOARD, THE DEPARTMENT, AND THE
23 APPLICANT. THE HEARING AND ANY APPEALS MUST BE CONDUCTED IN ACCORDANCE WITH THE
24 CONTESTED CASE PROCEEDINGS PURSUANT TO TITLE 2, CHAPTER 4, PARTS 6 AND 7. A HEARING
25 BEFORE THE BOARD MAY NOT BE REQUESTED REGARDING A DECISION OF THE DEPARTMENT MADE
26 PURSUANT TO SUBSECTION (2).

27
28 NEW SECTION. Section 6. Voluntary cleanup plan AND REIMBURSEMENT OF REMEDIAL ACTION
29 COSTS. (1) A ANY person who owns real property that has been contaminated with hazardous or
30 deleterious substances or any person who may be liable under 75-10-715(1) may submit an application for

1 the approval of a voluntary cleanup plan to the department under the provisions of this section.

2 (2) A voluntary cleanup plan must include:

3 (a) an environmental assessment of the ~~real property that describes the contamination, if any, on~~
4 ~~the property and the risk that the contamination currently poses to the public health, welfare, and safety~~
5 ~~and to the environment~~ FACILITY THAT INCLUDES THE INFORMATION REQUIRED IN [SECTION 6 7];

6 (b) a REMEDIAL proposal, ~~if needed, for remedial actions consistent with~~ THAT INCLUDES THE
7 INFORMATION REQUIRED IN [SECTION 6 7] AND THAT MEETS THE REQUIREMENTS OF 75-10-721. ~~The~~
8 ~~proposal must provide a timetable for implementing the proposal and for monitoring the site after the~~
9 ~~proposed measures are completed.~~

10 ~~(c) a description of the manner in which the remedial action plan satisfies the cleanup requirements~~
11 ~~of 75-10-721 and a description of any current risk to the public health, welfare, or safety or to the~~
12 ~~environment based upon the current or reasonably anticipated future use of the site; AND~~

13 (C) THE WRITTEN CONSENT OF CURRENT OWNERS OF THE FACILITY OR PROPERTY TO BOTH
14 THE IMPLEMENTATION OF THE VOLUNTARY CLEANUP PLAN AND ACCESS TO THE FACILITY BY THE
15 APPLICANT AND ITS AGENTS AND THE DEPARTMENT.

16 (3) THE APPLICANT SHALL REIMBURSE THE DEPARTMENT FOR ANY REMEDIAL ACTION COSTS
17 THAT THE STATE INCURS IN THE REVIEW AND OVERSIGHT OF A VOLUNTARY CLEANUP PLAN.

18 (4) THE DEPARTMENT MAY APPROVE A VOLUNTARY CLEANUP PLAN THAT PROVIDES FOR
19 PHASES OF REMEDIATION OR THAT ADDRESSES ONLY A PORTION OF THE FACILITY. TO THE EXTENT
20 THAT THE ORIGINAL ENVIRONMENTAL ASSESSMENT REQUIRED UNDER [SECTION 6 7] ADDRESSES
21 SUBSEQUENT PHASES OF REMEDIATION, THE APPLICANT MAY RELY ON THAT ASSESSMENT WHEN
22 SUBMITTING VOLUNTARY CLEANUP PLANS FOR SUBSEQUENT PHASES OF REMEDIATION.

23
24 NEW SECTION. Section 7. Environmental assessment VOLUNTARY CLEANUP PLANS --
25 requirements. (1) The department may only accept ~~environmental assessments~~ VOLUNTARY CLEANUP
26 PLANS under [sections ~~40 2 3~~ through ~~46 40 11~~] that are prepared by a qualified environmental
27 professional. A qualified environmental professional is a person with education, training, and experience
28 in preparing environmental studies and assessments.

29 (2) An environmental assessment described in this section must include the following information:

30 (a) the legal description of the ~~site~~ FACILITY and a map identifying the location and size of the

- 1 ~~property~~ FACILITY AND RELEVANT FEATURES, SUCH AS PROPERTY BOUNDARIES, SURFACE
2 TOPOGRAPHY, SURFACE AND SUBSURFACE STRUCTURES, AND UTILITY LINES;
- 3 (b) the physical characteristics of the ~~site~~ FACILITY and areas contiguous to the ~~site~~ FACILITY,
4 including the location of any surface water bodies and ground water aquifers;
- 5 (c) the location of any wells located on the site or on areas within a one-half mile radius of the site
6 and a description of the use of those wells;
- 7 (d) the current and reasonably anticipated future use of onsite ground AND SURFACE water;
- 8 (e) the operational history of the ~~site~~ FACILITY, INCLUDING OWNERSHIP, and the current use of
9 ~~areas contiguous to the site~~ THE FACILITY, INCLUDING ANY READILY AVAILABLE AERIAL PHOTOGRAPHS
10 FROM WITHIN THE STATE OF MONTANA;
- 11 (f) the current and reasonably anticipated future uses of the ~~site~~ FACILITY AND IMMEDIATELY
12 ADJACENT PROPERTIES;
- 13 (g) information ON THE METHODS AND RESULTS OF INVESTIGATIONS concerning the nature and
14 extent of any ~~contamination and~~ RELEASES OR THREATENED releases of hazardous or deleterious
15 substances that have occurred at the ~~site, including any impacts on areas contiguous to the site~~ FACILITY
16 AND A MAP SHOWING GENERAL AREAS AND CONCENTRATIONS OF HAZARDOUS OR DELETERIOUS
17 SUBSTANCES;
- 18 (h) any sampling results or other data that characterizes the soil, AIR, ground water, or surface
19 water on the site; ~~and~~
- 20 (i) a description of the human and environmental exposure to ~~contamination at the site~~ RELEASES
21 OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES AT THE FACILITY based
22 upon the ~~property's~~ current use OF THE FACILITY AND ADJACENT PROPERTIES and any reasonably
23 anticipated future use ~~proposed by the property owner~~ USES OF THE FACILITY; AND
- 24 (J) READILY AVAILABLE INFORMATION ON THE ENVIRONMENTAL REGULATORY AND
25 COMPLIANCE HISTORY OF THE FACILITY, INCLUDING ALL ENVIRONMENTAL PERMITS.
- 26 (3) A REMEDIATION PROPOSAL MUST INCLUDE THE FOLLOWING INFORMATION:
- 27 (A) A DETAILED DESCRIPTION OF THE COMPONENTS OF THE REMEDIATION PROPOSAL,
28 INCLUDING, TO THE EXTENT APPLICABLE:
- 29 (I) THE PROPOSED CLEANUP LEVELS FOR THE FACILITY;
- 30 (II) THE MANNER IN WHICH THE REMEDIATION PLAN SATISFIES THE CLEANUP REQUIREMENTS

1 OF 75-10-721;

2 (III) IDENTIFICATION OF SAMPLING OR TREATABILITY STUDIES; AND

3 (IV) A DEMONSTRATION THAT EXPOSURES TO RISK AFFECTING THE PUBLIC HEALTH, SAFETY,
4 AND WELFARE AND THE ENVIRONMENT AT THE FACILITY WILL BE SUBSTANTIALLY MITIGATED BY THE
5 PLAN;

6 (B) A BRIEF COMPARISON OF THE REMEDIATION PROPOSAL TO REASONABLE ALTERNATIVES
7 BASED ON THE REMEDY SELECTION CRITERIA SPECIFIED IN 75-10-721;

8 (C) A TIMETABLE FOR IMPLEMENTING THE PROPOSAL AND FOR ANY NECESSARY MONITORING
9 OF THE FACILITY AFTER THE PROPOSED MEASURES ARE COMPLETED;

10 (D) A STATEMENT THAT APPLICABLE HEALTH AND SAFETY REGULATIONS WILL BE MET
11 DURING IMPLEMENTATION OF THE REMEDIATION PROPOSAL;

12 (E) A DESCRIPTION OF HOW SHORT-TERM DISTURBANCES DURING IMPLEMENTATION OF THE
13 REMEDATION PROPOSAL WILL BE MINIMIZED; AND

14 (F) IDENTIFICATION OF ANY PERMITS NECESSARY TO CONDUCT THE PROPOSED REMEDIES.

15
16 NEW SECTION. SECTION 8. PUBLIC PARTICIPATION. (1) UPON DETERMINATION BY THE
17 DEPARTMENT THAT AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN IS COMPLETE PURSUANT
18 TO [SECTION 8(1) 9(1)], THE DEPARTMENT SHALL PUBLISH A NOTICE AND BRIEF ANALYSIS OF THE
19 PROPOSED PLAN IN A DAILY NEWSPAPER OF GENERAL CIRCULATION IN THE AREA AFFECTED AND
20 MAKE THE PLAN AVAILABLE TO THE PUBLIC.

21 (2) THE NOTICE MUST PROVIDE 30 DAYS FOR SUBMISSION OF WRITTEN COMMENTS TO THE
22 DEPARTMENT REGARDING THE PLAN. UPON WRITTEN REQUEST BY 10 OR MORE PERSONS, BY A
23 GROUP COMPOSED OF 10 OR MORE MEMBERS, OR BY A LOCAL GOVERNING BODY OF A CITY, TOWN,
24 OR COUNTY WITHIN THE COMMENT PERIOD, THE DEPARTMENT SHALL CONDUCT A PUBLIC MEETING
25 AT OR NEAR THE FACILITY REGARDING THE PROPOSED VOLUNTARY CLEANUP PLAN. THE MEETING
26 MUST BE HELD WITHIN 45 DAYS OF THE DEPARTMENT'S COMPLETENESS DETERMINATION UNDER
27 [SECTION 8(1) 9(1)].

28 (3) THE DEPARTMENT SHALL CONSIDER AND RESPOND TO RELEVANT WRITTEN OR VERBAL
29 COMMENTS SUBMITTED DURING THE COMMENT PERIOD OR AT THE PUBLIC MEETING.

30 (4) THE DEPARTMENT'S DECISION ON THE FINAL PLAN AND THE REASONS FOR ANY

1 SIGNIFICANT MODIFICATION OF THE FINAL PLAN MUST BE PUBLISHED IN ACCORDANCE WITH
2 SUBSECTION (1).

3 (5) COMPLIANCE WITH THIS SECTION IS CONSIDERED TO SATISFY THE PUBLIC PARTICIPATION
4 REQUIREMENTS OF TITLE 75, CHAPTER 1.

5
6 NEW SECTION. Section 9. Approval of voluntary action CLEANUP plan -- time limits -- content
7 of notice -- expiration of approval. (1) ~~(a) The~~ THE DEPARTMENT SHALL REVIEW FOR COMPLETENESS,
8 INCLUDING ADEQUACY AND ACCURACY, AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN AND
9 SHALL PROVIDE A WRITTEN COMPLETENESS NOTICE TO THE APPLICANT WITHIN 30 DAYS AFTER
10 RECEIPT OF THE APPLICATION. THE COMPLETENESS NOTICE MUST NOTE ALL DEFICIENCIES
11 IDENTIFIED IN THE INFORMATION SUBMITTED.

12 (2) FOR A VOLUNTARY CLEANUP PLAN THAT IS CONSIDERED COMPLETE BY THE DEPARTMENT
13 PURSUANT TO SUBSECTION (1), THE department shall provide formal written notification that a THE
14 voluntary cleanup plan has been approved or disapproved within NO MORE THAN 60 days after a request
15 by a property owner. THE DEPARTMENT'S DETERMINATION THAT AN APPLICATION IS COMPLETE, unless
16 the property owner or person who may be liable under 75-10-715(1) APPLICANT and the department agree
17 to an extension of the review to a date certain. The review must be limited to a review of the materials
18 submitted by the applicant, PUBLIC COMMENTS, and documents or information readily available to the
19 department. ~~If the department fails to act on an application within the time limits specified in this~~
20 subsection (1), the voluntary cleanup plan is approved. THE DEPARTMENT SHALL COMMUNICATE WITH
21 THE APPLICANT DURING THE REVIEW PERIOD TO ENSURE THAT THE APPLICANT HAS THE
22 OPPORTUNITY TO ADDRESS THE PUBLIC COMMENTS.

23 (3) (A) IF THE DEPARTMENT RECEIVES FIVE APPLICATIONS FOR REVIEW OF A VOLUNTARY
24 CLEANUP PLAN IN A CALENDAR MONTH, INCLUDING APPLICATIONS DEFERRED FROM PRIOR MONTHS,
25 THE DEPARTMENT MAY NOTIFY ANY ADDITIONAL APPLICANTS IN THAT MONTH THAT THEIR PLANS
26 MUST BE REVIEWED IN THE ORDER RECEIVED. THE 30-DAY PERIOD FOR DEPARTMENT
27 COMPLETENESS REVIEW OF DEFERRED APPLICATIONS PURSUANT TO SUBSECTION (1) MUST BEGIN
28 ON THE FIRST DAY OF THE SUBSEQUENT MONTH THAT EACH PLAN IS ELIGIBLE FOR REVIEW.

29 (B) THE DEPARTMENT SHALL DISCONTINUE ACCEPTING VOLUNTARY CLEANUP APPLICATIONS
30 WHEN 15 APPLICATIONS ARE PENDING AND ARE BEING REVIEWED BY THE DEPARTMENT. THE

1 DEPARTMENT SHALL ESTABLISH A WAITING LIST FOR APPLICATIONS AND SHALL CONSIDER THE
2 APPLICATIONS IN ORDER OF SUBMITTAL.

3 (C) IF THE DEPARTMENT HAS RECEIVED MULTIPLE CLEANUP APPLICATIONS FOR A
4 VOLUNTARY CLEANUP AT THE SAME FACILITY, THE DEPARTMENT SHALL NOTIFY ALL OF THE
5 APPLICANTS AND OFFER THEM THE OPPORTUNITY TO SUBMIT A JOINT APPLICATION.

6 (4) CONSISTENT WITH THE PROVISIONS OF 75-10-707, THE DEPARTMENT MAY ACCESS THE
7 FACILITY DURING REVIEW OF THE APPLICATION AND IMPLEMENTATION OF THE VOLUNTARY CLEANUP
8 PLAN TO CONFIRM INFORMATION PROVIDED BY THE APPLICANT AND VERIFY THAT THE CLEANUP IS
9 BEING CONDUCTED CONSISTENT WITH THE APPROVED PLAN.

10 ~~{b}(5)~~ The department shall approve a voluntary cleanup plan if, ~~based on the information submitted~~
11 ~~by the property owner or person who may be liable under 75-10-715(1),~~ the department concludes that
12 the plan MEETS THE REQUIREMENTS SPECIFIED IN [SECTION 6 7] AND will attain a degree of cleanup
13 and control of hazardous or deleterious substances, ~~or both,~~ that complies with the requirements of
14 75-10-721. EXCEPT FOR THE PERIOD NECESSARY FOR THE OPERATION AND MAINTENANCE OF THE
15 APPROVED REMEDIATION PROPOSAL, THE DEPARTMENT MAY NOT APPROVE A VOLUNTARY
16 REMEDATION PROPOSAL THAT WOULD TAKE LONGER THAN 24 MONTHS AFTER DEPARTMENT
17 APPROVAL TO COMPLETE.

18 ~~{e}(6)~~ If a voluntary cleanup plan is not approved by the department, the department shall promptly
19 provide the applicant with a written statement of the reasons for denial. ~~If the department disapproves a~~
20 ~~voluntary cleanup plan based upon the applicant's failure to submit the information required by [section 12],~~
21 ~~the department shall notify the applicant of the specific information omitted by the applicant.~~

22 ~~{d}(7)~~ The approval of a voluntary cleanup plan by the department applies only to conditions ~~on~~
23 ~~the property~~ AT THE FACILITY that ~~exist as of~~ ARE KNOWN TO THE DEPARTMENT AT the time of
24 ~~submission of the application~~ DEPARTMENT APPROVAL. If a voluntary ~~cleanup plan~~ REMEDATION
25 PROPOSAL is not initiated within 12 months and, EXCEPT FOR THE PERIOD NECESSARY FOR THE
26 OPERATION AND MAINTENANCE OF THE APPROVED REMEDIATION PROPOSAL, IS NOT completed within
27 24 months after approval by the department, the department's approval lapses. However, the department
28 may grant an extension of the time limit for completion of the voluntary cleanup plan.

29 (8) IF REASONABLY UNFORESEEABLE CONDITIONS ARE DISCOVERED DURING
30 IMPLEMENTATION OF A VOLUNTARY CLEANUP PLAN THAT SUBSTANTIALLY AFFECT THE RISK TO

1 PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT OR SUBSTANTIALLY CHANGE THE
2 SCOPE OF THE APPROVED PLAN, THE APPLICANT SHALL PROMPTLY NOTIFY THE DEPARTMENT. THE
3 DEPARTMENT MAY REQUIRE THE APPLICANT TO SUBMIT AN AMENDMENT TO THE APPROVED PLAN
4 TO ADDRESS THE UNFORESEEN CONDITIONS OR MAY DETERMINE THAT A VOLUNTARY CLEANUP
5 PLAN IS NO LONGER APPROPRIATE PURSUANT TO [SECTION 4(3) 5(3)].

6 ~~(2)(9)~~ Written notification by the department that a voluntary cleanup plan is NOT approved must
7 contain STATE the basis for the approval DISAPPROVAL OF THE VOLUNTARY CLEANUP PLAN.

8 ~~(3)(10)~~ (a) Failure of a ~~property owner~~ THE APPLICANT OR THE APPLICANT'S AGENTS to
9 materially comply with the voluntary cleanup plan approved by the department pursuant to this section
10 renders the approval void.

11 (b) Submission of materially misleading information by the applicant OR THE APPLICANT'S
12 AGENTS in the APPLICATION OR DURING IMPLEMENTATION OF THE voluntary cleanup plan renders the
13 department approval void.

14 ~~(4)(11)~~ Within 60 days after the completion of the ~~voluntary cleanup~~ APPROVED REMEDIATION
15 PROPOSAL described in the voluntary cleanup plan approved by the department, the applicant shall provide
16 to the department a certification from a qualified environmental professional that the plan has been fully
17 implemented, INCLUDING ALL DOCUMENTATION NECESSARY TO DEMONSTRATE THE SUCCESSFUL
18 IMPLEMENTATION OF THE PLAN, SUCH AS CONFIRMATION SAMPLING, IF NECESSARY.

19 (12) EXCEPT AS PROVIDED IN [SECTION 10(2)(B) 11(2)(B)], THE DEPARTMENT MAY NOT
20 REQUIRE FINANCIAL ASSURANCE UNDER THIS PART FOR VOLUNTARY CLEANUP PLANS APPROVED
21 UNDER THIS SECTION.

22 (13) IF A PERSON WHO WOULD OTHERWISE NOT BE A LIABLE PERSON UNDER 75-10-715(1)
23 ELECTS TO UNDERTAKE AN APPROVED VOLUNTARY CLEANUP PLAN, THE PERSON MAY NOT BECOME
24 A LIABLE PERSON UNDER 75-10-715(1) BY UNDERTAKING A VOLUNTARY CLEANUP IF THE PERSON
25 MATERIALLY COMPLIES WITH THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT
26 PURSUANT TO THIS SECTION.

27 ~~(14) AFTER COMPLETION OF AN APPROVED VOLUNTARY CLEANUP PLAN OR PHASE OF A~~
28 ~~PLAN, A PERSON WHO IS LIABLE UNDER 75-10-715(1) AND INCURS REMEDIAL ACTION COSTS MAY~~
29 ~~SEEK CONTRIBUTION AND REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND~~
30 ~~PURSUANT TO THE REQUIREMENTS AND LIMITATIONS OF 75-10-724.~~

1 (14) IMMUNITY FROM LIABILITY UNDER THIS SECTION DOES NOT APPLY TO A RELEASE THAT
2 IS CAUSED BY CONDUCT THAT IS NEGLIGENT OR GROSSLY NEGLIGENT OR THAT CONSTITUTES
3 INTENTIONAL MISCONDUCT.

4
5 NEW SECTION. Section 10. Voluntary action to preclude remedial action by department. If a party
6 has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan,
7 the department may not, except as provided in 75-10-712, take remedial action under 75-10-711 WITH
8 REGARD TO THOSE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
9 SUBSTANCES THAT ARE ADDRESSED BY THE APPROVED VOLUNTARY CLEANUP PLAN.

10
11 NEW SECTION. Section 11. Closure and release from liability. (1) After completion of the
12 ~~remedial actions required by the department under this part or the voluntary action plan, a property owner~~
13 ~~or any person who may be liable under 75-10-715(1)~~ VOLUNTARY CLEANUP PLAN, AN APPLICANT may
14 petition the department for closure of the ~~site and release from liability for remedial actions and remedial~~
15 ~~action costs~~ FACILITY under [sections ~~40 2 3~~ through ~~46 10 11~~].

16 (2) ~~The~~ WITHIN 60 DAYS OF RECEIPT OF A PETITION FOR CLOSURE, WEATHER PERMITTING,
17 THE department shall CONDUCT A review ~~the site~~ to determine that the ~~site does~~ RELEASES OR
18 THREATENED RELEASES ADDRESSED IN THE VOLUNTARY CLEANUP PLAN DO not pose a significant
19 threat to public health, welfare, or safety or to the environment as determined in accordance with
20 75-10-721 and that the ~~responsible parties have~~ APPLICANT HAS:

21 (a) implemented all appropriate ~~response~~ REMEDIAL actions; and
22 (b) IF NECESSARY, provided for long-term funding for ~~site~~ FACILITY maintenance or monitoring;
23 AND
24 (C) REIMBURSED THE DEPARTMENT FOR ALL REMEDIAL ACTION COSTS OF THE VOLUNTARY
25 CLEANUP.

26 (3) In the event that the petition for closure ~~and release from liability~~ is not approved by the
27 department, the department shall promptly provide the applicant with a written statement of the reasons
28 for denial. Written notification that the petition is approved by the department must include the following
29 language:

30 "Based upon the information provided by (insert name(s) of ~~property owner(s)~~ APPLICANT(S))

concerning property located at [insert address], it is the opinion of the Montana Department of Health and Environmental Sciences that upon completion of the ~~remedial action or voluntary cleanup plan:~~

~~(1) no further action is required to ensure that this property, when used for the purposes identified, is protective of existing and proposed uses and does not pose an unacceptable risk to the public health, welfare, or safety or to the environment at the site; and~~

~~(2) [insert name(s) of property owner(s) or any person who may be liable under 75-10-715(1)] are released from any liability, claims, or causes of action for remedial costs and remedial actions at the site."~~

VOLUNTARY CLEANUP PLAN, NO FURTHER ACTION IS REQUIRED TO ENSURE THAT THIS FACILITY, WHEN USED FOR THE [INSERT PURPOSES IDENTIFIED], IS PROTECTIVE OF EXISTING AND PROPOSED USES AND DOES NOT POSE A SIGNIFICANT RISK TO PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT AT THE FACILITY WITH REGARD TO RELEASES OR THREATENED RELEASES ADDRESSED IN THE VOLUNTARY CLEANUP PLAN. THE DEPARTMENT RESERVES THE RIGHT TO CONDUCT OR REQUIRE FURTHER REMEDIAL ACTION AT THIS FACILITY IF A NEW RELEASE OCCURS OR IF THE DEPARTMENT RECEIVES NEW OR DIFFERENT INFORMATION THAN PRESENTED IN THE APPROVED VOLUNTARY CLEANUP PLAN."

(4) AFTER COMPLETION OF A PORTION OF A FACILITY ADDRESSED IN THE VOLUNTARY CLEANUP PLAN, THE DEPARTMENT SHALL ISSUE A LETTER OF COMPLETION NOTICE TO THE APPLICANT IF THE DEPARTMENT DETERMINES THAT THE APPLICANT HAS SATISFIED THE REQUIREMENTS OF SUBSECTION (2).

~~Section 17. Section 85-1-604, MCA, is amended to read:~~

~~"85-1-604. Renewable resource grant and loan program state special revenue account created—revenues allocated—limitations on appropriations from account. (1) There is created a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.~~

~~(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:~~

~~(a) all revenues of the works and other money as provided in 85-1-332;~~

~~(b) 38% of the amount of interest income of the resource indemnity trust fund as provided in and~~

1 ~~subject to the conditions of 15-38-202;~~

2 ~~(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource~~
3 ~~loan debt service fund above debt service requirements as provided in and subject to the conditions of~~
4 ~~85-1-619;~~

5 ~~(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of~~
6 ~~loans, including arrangements for obtaining security interests; and~~

7 ~~(e) 20% of the resource indemnity tax proceeds.~~

8 ~~(3) Appropriations may be made from the renewable resource grant and loan program state special~~
9 ~~revenue account for the following purposes and subject to the following conditions:~~

10 ~~(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b)~~
11 ~~must be used for renewable resource grants.~~

12 ~~(b) An amount less than or equal to that paid into the account under 85-1-332 and only that~~
13 ~~amount may be appropriated for the operation and maintenance of state owned projects and works. If the~~
14 ~~amount of money available for appropriation under this subsection (b) is greater than that necessary for~~
15 ~~operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).~~

16 ~~(c) An amount less than or equal to that paid into the account from the resource indemnity trust~~
17 ~~account plus any excess from subsection (3)(b) and only that amount may be appropriated from the~~
18 ~~account for expenditures that meet the policies and objectives of the renewable resource grant and loan~~
19 ~~program. If the amount of money available for appropriation under this subsection (c) is greater than that~~
20 ~~necessary for operation and maintenance expenses, the excess may be appropriated as provided in~~
21 ~~subsection (3)(d).~~

22 ~~(d) An amount less than or equal to that paid into the account from the sources provided for in~~
23 ~~subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be~~
24 ~~appropriated from the account for:~~

25 ~~(i) loans and grants for renewable resource projects;~~

26 ~~(ii) for purchase of liens and operation of property as provided in 85-1-615;~~

27 ~~(iii) for administrative expenses, including but not limited to the salaries and expenses of personnel,~~
28 ~~equipment, and office space;~~

29 ~~(iv) for the servicing of loans, including arrangements for obtaining security interests; and~~

30 ~~(v) for other necessities incurred in administering the loans and grants."~~

1 NEW SECTION. SECTION 12. STUDY PROCESS. THE DEPARTMENT OF HEALTH AND
2 ENVIRONMENTAL SCIENCES, WITH LEGISLATIVE OVERSIGHT FROM THE ENVIRONMENTAL QUALITY
3 COUNCIL, SHALL INSTITUTE A COLLABORATIVE PROCESS INVOLVING ALL AFFECTED AND INTERESTED
4 PARTIES THAT SPECIFICALLY ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY WITH
5 RESPECT TO CLEANUP OF STATE CECRA SITES AND ANY RELATED FUNDING NECESSARY TO CLEAN
6 UP STATE CECRA SITES AS A RESULT OF ELIMINATING JOINT AND SEVERAL LIABILITY. THE
7 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL SUBMIT A REPORT AND
8 LEGISLATIVE PROPOSALS THAT COLLABORATIVELY RESULTED FROM THAT PROCESS TO THE 55TH
9 LEGISLATURE.

10
11 NEW SECTION. Section 13. Severability. If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.

15
16 NEW SECTION. Section 14. Codification instructions. (1) ~~[Section 9] is intended to be codified~~
17 ~~as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 9].~~

18 ~~(2) [Sections 40 2 3 through 46 40 11] are intended to be codified as an integral part of Title 75,~~
19 ~~chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 40 2 3 through~~
20 ~~46 40 11].~~

21
22 NEW SECTION. Section 15. Applicability. (1) ~~[This act] applies to all pending actions or~~
23 ~~proceedings by the state~~ DOES NOT APPLY TO CIVIL OR ADMINISTRATIVE ACTIONS COMMENCED OR
24 BEGUN PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] OR TO CLAIMS BASED ON THOSE ACTIONS.
25 CLAIMS FOR REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND MAY NOT
26 BE SUBMITTED FOR ANY COSTS INCURRED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

27 (2) [SECTIONS 2 THROUGH 10] APPLY AFTER JANUARY 1, 2001, TO VOLUNTARY CLEANUP
28 PLANS APPROVED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES BETWEEN [THE
29 EFFECTIVE DATE OF THIS ACT] AND JANUARY 1, 2001.

1 NEW SECTION. SECTION 16. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND
2 APPROVAL.

3
4 NEW SECTION. SECTION 17. TERMINATION. [SECTIONS 2 THROUGH 10] TERMINATE
5 JANUARY 1, 2001.

6
7 ~~NEW SECTION. Section 21. Effective date. [This act] is effective on passage and approval.~~

8 -END-

Amendments to Senate Bill No. 382
Reference Copy

Requested by Sen. Harp
For the Free Conference Committee

Prepared by Martha Colhoun
April 12, 1995

1. Title, line 6.

Following: "PROCESS;"

Insert: "ESTABLISHING THE MIXED FUNDING PILOT PROGRAM;"

2. Title, line 9.

Following: "SECTIONS"

Insert: "15-37-117,"

Following: "75-10-701"

Insert: ", "

3. Title, line 10.

Strike: "AND"

Following: "~~85-1-604~~,"

Insert: "AND 75-10-722,"

4. Title, line 12.

Strike: "A"

Strike: "DATE"

Insert: "DATES"

5. Page 16, line 21.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

6. Page 21.

Following: line 25

Insert: "

Section 3. Section 75-10-722, MCA, is amended to read:

"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department ~~shall~~ may require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding

on any subsequent action or actions to recover further remedial action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical onsite construction of the remedial action.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704." Renumber: subsequent sections

7. Page 21, line 26.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

8. Page 21, line 30.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

9. Page 23, line 18.

Strike: "9"

Insert: "10"

10. Page 24, lines 5, 7, and 20.

Strike: "7"

Insert: "8"

11. Page 24, line 26.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

12. Page 26, lines 18 and 27.

Strike: "9(1)"

Insert: "10(1)"

13. Page 28, line 12.

Strike: "7"

Insert: "8"

14. Page 29, line 5.

Strike: "5(3)"

Insert: "6(3)"

15. Page 29, line 19.

Strike: "11(2)(B)"

Insert: "12(2)(b)"

16. Page 30, line 15.

Strike: "3"
Insert: "4"
Strike: "11"
Insert: "12"

17. Page 33.
Following: line 10

NEW SECTION. Section 14. Short title. [Sections 14 through 20] may be cited as the "Mixed Funding Pilot Program".

NEW SECTION. Section 15. Purpose -- legislative declaration. (1) The purposes of [sections 14 through 20] are to establish a pilot remediation program to operate in conjunction with the voluntary cleanup program provided for in [sections 4 through 12] and to provide information during the 2-year study process in [section 13].

(2) The legislature further intends that the pilot program provide necessary data related to:

- (a) actual costs incurred in the remediation of facilities;
- (b) the costs associated with the elimination of joint and several liability;
- (c) the potential use of resource indemnity trust fund money in remediating facilities;
- (d) the feasibility of voluntary cleanup plans; and
- (e) the coordination between an applicant and the department in the use of voluntary cleanup programs.

NEW SECTION. Section 16. Criteria. (1) The pilot program must consist of remediation of three sites from the department of state lands' abandoned hard-rock mine priority list. The three sites must be selected from the top ten priority sites on that list as of April 1, 1995.

(2) Any site remediated under this pilot program must meet the following criteria:

(a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease purchase agreement or an option to purchase property where the facility is located.

(b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of [sections 7 and 8].

(c) The department has accepted and approved the application for a voluntary cleanup plan in accordance with the provisions of [sections 7 through 10].

(3) The department and the applicant shall negotiate an apportionment of the applicant's liability pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the applicant's apportioned liability. If the applicant disagrees with the department's determination of the applicant's proportionate share of liability, the applicant may appeal the department's decision in accordance with the requirements of [section 6(4)].

(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on the department of state lands' abandoned hard-rock mine priority list and the department approves more than three plans, the department shall select three

plans to incorporate into the pilot program on a priority basis as determined by the date of submittal of a complete application.

NEW SECTION. Section 17. Mixed funding -- determination of liability. (1) An applicant who satisfies the requirements of [section 16(2)] shall meet with the department within 30 days of approval of the voluntary cleanup plan to negotiate an apportionment of liability for the site. The burden is on the applicant to show how the applicant's liability should be apportioned. In apportioning the liability of the applicant under this section, the department shall balance all of the following factors:

(a) the extent to which the applicant caused the release of the hazardous or deleterious substance;

(b) the extent to which an applicant's contribution to the release of a hazardous or deleterious substance can be diminished;

(c) the amount of the hazardous or deleterious substance involved;

(d) the degree of toxicity of the hazardous or deleterious substance involved;

(e) the degree of involvement of and care exercised by the applicant in manufacturing, treating, transporting, or disposing of the hazardous or deleterious substance;

(f) the degree of cooperation by the applicant with state or local officials to prevent any harm to the public health, safety, or welfare or to the environment; and

(g) the applicant's knowledge of the hazardous nature of the substance.

(2) Once the department and the applicant have negotiated an apportionment of the applicant's liability, the applicant has a right of reimbursement subject to the requirements and limitations of [section 18].

NEW SECTION. Section 18. Claims for and limitations on reimbursement. (1) After completion of the voluntary cleanup plan approved by the department, the applicant may apply to and must, in accordance with this section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement must be subject to the following requirements and limitations:

(a) The applicant shall complete remediation prior to making a claim for reimbursement.

(b) The reimbursement may not exceed 90% of eligible costs up to a maximum of \$300,000 per facility.

(c) The claim for reimbursement may not include legal fees or department costs incurred in the oversight of the voluntary cleanup plan.

(2) For purposes of this section, "eligible costs" means costs in excess of an applicant's proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium.

(3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable parties to recover those costs.

(4) If the abandoned mines state special revenue account does not contain sufficient money to pay received claims for reimbursement, the abandoned mines state special revenue account and the department are not liable for making any reimbursement at that time. All claims are subject to appropriations to the abandoned mines state special revenue account.

NEW SECTION. Section 19. Abandoned mines state special revenue account created. (1) There is an abandoned mines state special revenue account within the state special revenue account fund established in 17-2-102.

(2) There must be paid into the abandoned mines state special revenue account money allocated from the metalliferous mines license tax pursuant to 15-37-117.

(3) Deposits to the abandoned mines state special revenue account must be placed in short-term investments. The interest on short-term investments must be deposited in the abandoned mines state special revenue account.

(4) The purpose of the abandoned mines state special revenue account is to provide the funding to the department of health and environmental sciences for the cleanup and reclamation of sites eligible for the pilot program in [sections 14 through 20].

NEW SECTION. Section 20. Incorporation into study process -- report to legislature. The department of health and environmental sciences and applicants participating in the pilot program shall submit reports to the 55th legislature detailing the success of and difficulties with the operation of the pilot program.

Section 21. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) ~~to the state resource indemnity trust fund, 15.5% to~~ the abandoned mines state special revenue account provided for in [section 19], 8.5% of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

NEW SECTION. Section 22. Coordination instruction. If House Bill No. 569 and [this act] are both passed and approved, the amendment to 15-37-117(1)(c) in House Bill No. 569, relating to the percentage allocation to the resource indemnity trust fund, is void."

Renumber: subsequent sections

18. Page 33, line 18.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

19. Page 33, line 19.

Strike: "3"

Insert: "4"

20. Page 33, line 20.

Strike: "11"

Insert: "12"

21. Page 33, line 27.

Strike: "2"

Insert: "4"

Strike: "10"

Insert: "12"

22. Page 34, line 4

Following: "TERMINATION."

Insert: "(1)"

Strike: "2"

Insert: "4"

Strike: "10"

Insert: "12"

23. Page 34.

Following: line 5

Insert: "(2) [Sections 14 through 21] terminate June 30, 1997."

MONTANA DEPARTMENT OF STATE LANDS
HARD ROCK MINE PRIORITY SITES

<u>Site</u>	<u>Mining District/ County</u>	<u>Priority Ranking</u>	<u>Remarks</u>	<u>Reclamation Status</u>
Corbin Flats	Colorado/Jefferson	1	700,000 cubic yards tailings, high in arsenic, lead, copper, and zinc. Spring Creek flows directly through tailings.	discussions between DHES and private owner
Joslyn Street	Helena/Lewis & Clark	2	4900 cubic yards tailings, high in arsenic and lead. Very near Helena residential area.	discussions between DHES and private owner
Red Mountain	Rimini/Lewis & Clark	3	13,300 cubic yards tailings, high in arsenic, lead, and mercury. Seeps directly into Ten Mile Creek.	no action
National Extension	Rimini/Lewis & Clark	4	7,530 cubic yards tailings, high in arsenic and lead. Discharge adit into Beaver Creek and Ten Mile Creek.	no action
Emery	Rimini/Powell	5	21,400 cubic yards tailings, 244,625 cubic yards waste rock, high in arsenic, copper, lead, and zinc. Near residences.	no action
Red Water	Rimini/Lewis & Clark	6	7,000 cubic yards waste rock and discharging adits, both high in arsenic, lead, and zinc. Seeps into Ten Mile Creek.	no action

Curlew	Curlew/Ravalli	7	41,000 cubic yards tailings, high in arsenic, lead, and zinc. In site of housing developments.	no action
Piegan Goster Mill	Marysville/Lewis & Clark	8	335,820 cubic yards tailings, high in lead and zinc. Piegan Creek flows through the site.	no action
Block P Tailings	Hughesville/Cascade	9	625,000 cubic yards tailings, high in arsenic, lead, and iron. Galena Creek highly contaminated.	dicussions between USFS and private owner
Comet	High Ore/Jefferson	10	500,000 cubic yards tailings, high in arsenic, copper, lead, and zinc. High Ore Creek flows through tailings.	no action

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 382

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on April 12, 1995,
at 4:18 p.m. in Room 405.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Rep. Scott J. Orr, Vice-Chairman (R)
Sen. Mike Foster (R)
Sen. John "J.D." Lynch (D)
Rep. Dick Knox (R)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Martha Colhoun, Environmental Quality Council
Carla Turk, Secretary

Discussion:

CHAIRMAN GROSFIELD explained amendments sb038213.amc had been drafted at the request of **SENATOR HARP**, the sponsor of SB 382.

Motion:

SENATOR J.D. LYNCH MOVED TO ADOPT AMENDMENTS NUMBERED
sb038213.amc.

Discussion:

Paige Dringman, Mining Association, explained amendments #1-4 changed the title, #5 changed the numbering, and #6 gave the Department the discretion to require liable parties to pay for remedial action costs. Number 17 provided for the creation of a mixed funding pilot program to work in conjunction with the Bill's proposed two-year study regarding the elimination of joint and several liability, and necessary funding if joint and several liability were eliminated. She said this program would provide data regarding actual costs such as cleaning up a mining site, how feasible the voluntary clean-up plans were going to be, and how liability was going to be apportioned. She reiterated that this was only a two-year program and the funding source for the

program was 8.5% of the metalliferous mines license tax. She clarified that the funding was to come from the flow into the Resource Indemnity Trust (RIT) Fund, not from the interest from the RIT, so it would not affect any existing programs which were funded from the interest from the RIT Program. She stated that the Budget Office, the Department of Natural Resources (DNRC), and Governor had agreed to keep as is that use of the Fund. She explained that the amendments provided coordination instructions with HB 569 and its funding. She explained that Section 16, page 3 dealt with criteria. She said the pilot program requires a site where the owner purchased the property prior to 1989. The owner of the site or anyone who wanted to clean it up would have to submit a voluntary clean-up plan to the Montana Department of Health and Environmental Sciences (DHES) for the Department's approval. She said the applicant's plan would have to contain criteria which would comply with the clean-up standards, etc. in the Bill. She stated that once these requirements had been met the Department and the applicant would sit down and negotiate liability. She said Section 17 explained that apportionment of liability would be determined on the basis of the listed factors. She stated that Section 18 explained the claims process, and said that once the voluntary plan was completed, reimbursement could be applied for. She noted that reimbursement could not exceed 90% of eligible costs, and defined eligible costs as those costs over and above the applicant's share of liability. She clarified that, additionally, reimbursement was limited to a maximum of \$300,000 per facility. She reasoned that the limitation was proposed because this was only a two-year program with limited funding and clarified that only three sites would be eligible. She said those three sites would be selected from the Department of State Lands' abandoned mines high priority list. She explained that list ranks sites according to priority based on public health, toxicity, danger to the environment, etc. She said owners, or applicants, of the top ten of those sites could submit voluntary plans and the Department would select three sites, based on the date of submission of the applications. She attested that the limit of three sites, capped at \$300,000, would prevent costs from exceeding the RIT money going into the Special Revenue Account. She explained that if the money was not appropriated to the Special Revenue Account the program would not take affect. She maintained that the results of the clean-up of these sites would be incorporated into the study process. She said Section 21 provided for the disposition of the tax into the fund and Section 22 provided coordination instructions with HB 569. She stated that the balance of the amendments dealt with renumbering and the termination date of June 30, 1997.

SENATOR FOSTER noted that when **SENATOR BECK** presented his bill before the Senate Natural Resources Committee the Department had provided a prioritized list of 52 clean-up sites. He asked, based on whatever prioritization had currently taken place, what were the top three sites? **Ms. Dringman** handed out a list of the top ten sites, as determined by the Department of State Lands.

CHAIRMAN GROSFIELD asked which Section of the amendments contained the language regarding the three sites and method for selection? **Ms. Dringman** stated that Section 16 contained that language.

CHAIRMAN GROSFIELD asked if **Director Robinson** had any comments regarding the amendments. **Bob Robinson, Director, DHES**, stated the Department's support of the amendments and reported that the Department had discussed the voluntary program with the Governor. He stated there was one clerical change needed on page 3, Section 16, (c) which should read "[sections 6 through 10]", not "[sections 7 through 10]". He also urged the Senate to adopt the House Amendments.

REPRESENTATIVE CARLEY TUSS asked, in Section 3 where "shall" was changed to "may" in terms of requiring remedial costs, if that change was intended to be coupled with Section 17 which determined liability? She asked if "may" was to be used when apportioning the liability of the applicant, and the applicant's liability was considered to be very minor, would the Department use discretion imposing the penalty in other significant circumstances? **Mr. Robinson** stated that Section was a substantive section which applied to all super-fund clean-ups. He said the Section gave the option as to whether or not the Department could require payment of the State's cost by the person liable. He clarified that there may be instances of clean-ups, other than provided for in this pilot program, whereby there was a bankrupt responsible party. He stated that Section would allow the Department to enter into those considerations with the option to decide whether or not the liable party was required to pay the Department's operating expenses.

CHAIRMAN GROSFIELD asked for comments from the perspective of the RIT and DNRC. **Ray Beck, Department of Natural Resources**, stated they had been involved in developing the coordination language with HB 569 and the amendments regarding the RIT Fund and they were in agreement.

Motion/Vote:

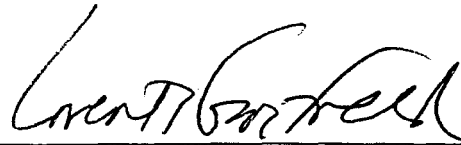
SENATOR LYNCH'S SUBSTITUTE MOTION THAT THE SENATE ACCEDE TO THE HOUSE AMENDMENTS AND ADOPT SB038213.AMC CARRIED UNANIMOUSLY.

Motion/Vote:

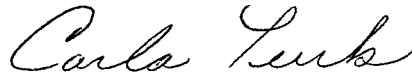
SENATOR LYNCH'S MOTION TO ADOPT THE FREE CONFERENCE COMMITTEE REPORT CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: CHAIRMAN GROSFIELD adjourned the meeting at 4:32
p.m.



SEN. LORENTS GROSFIELD, Chairman



CARLA TURK, Secretary

LG/cmt

Free Conference Committee
on SB 382
Report No. 1, April 12, 1995

Page 1 of 8

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 382, met and considered:

SB 382 in its entirety

We recommend that SB 382 (reference copy as amended - salmon) be amended as follows:

1. Title, line 6.

Following: "PROCESS;"

Insert: "ESTABLISHING THE MIXED FUNDING PILOT PROGRAM;"

2. Title, line 9.

Following: "SECTIONS"

Insert: "15-37-117,"

Following: "75-10-701"

Insert: ", "

3. Title, line 10.

Strike: "AND"

Following: "~~85-1-604~~,"

Insert: "AND 75-10-722,"

4. Title, line 12.

Strike: "A"

Strike: "DATE"

Insert: "DATES"

5. Page 16, line 21.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

6. Page 21.

Following: line 25

Insert: "

Section 3. Section 75-10-722, MCA, is amended to read:

"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department ~~shall~~ may require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

ADOPT

REJECT

841641CC.SPV

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical onsite construction of the remedial action.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704."
Renumber: subsequent sections

7. Page 21, line 26.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

8. Page 21, line 30.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

9. Page 23, line 18.

Strike: "9"

Insert: "10"

10. Page 24, lines 5, 7, and 20.

Strike: "7"

Insert: "8"

11. Page 24, line 26.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

12. Page 26, lines 18 and 27.

Strike: "9(1)"

Insert: "10(1)"

13. Page 28, line 12.

Strike: "7"

Insert: "8"

14. Page 29, line 5.

Strike: "5(3)"

Insert: "6(3)"

15. Page 29, line 19.

Strike: "11(2)(B)"

Insert: "12(2)(b)"

16. Page 30, line 15.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

17. Page 33.

Following: line 10

NEW SECTION. Section 14. Short title. [Sections 14 through 20] may be cited as the "Mixed Funding Pilot Program".

NEW SECTION. Section 15. Purpose -- legislative declaration. (1) The purposes of [sections 14 through 20] are to establish a pilot remediation program to operate in conjunction with the voluntary cleanup program provided for in [sections 4 through 12] and to provide information during the 2-year study process in [section 13].

(2) The legislature further intends that the pilot program provide necessary data related to:

- (a) actual costs incurred in the remediation of facilities;
- (b) the costs associated with the elimination of joint and several liability;
- (c) the potential use of resource indemnity trust fund money in remediating facilities;
- (d) the feasibility of voluntary cleanup plans; and
- (e) the coordination between an applicant and the department in the use of voluntary cleanup programs.

NEW SECTION. Section 16. Criteria. (1) The pilot program must consist of remediation of three sites from the department of state lands' abandoned hard-rock mine priority list. The three sites must be selected from the top ten priority sites on that list as of April 1, 1995.

(2) Any site remediated under this pilot program must meet

the following criteria:

(a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease purchase agreement or an option to purchase property where the facility is located.

(b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of [sections 7 and 8].

(c) The department has accepted and approved the application for a voluntary cleanup plan in accordance with the provisions of [sections 6 through 10].

(3) The department and the applicant shall negotiate an apportionment of the applicant's liability pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the applicant's apportioned liability. If the applicant disagrees with the department's determination of the applicant's proportionate share of liability, the applicant may appeal the department's decision in accordance with the requirements of [section 6(4)].

(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on the department of state lands' abandoned hard-rock mine priority list and the department approves more than three plans, the department shall select three plans to incorporate into the pilot program on a priority basis as determined by the date of submittal of a complete application.

NEW SECTION. **Section 17. Mixed funding -- determination of liability.** (1) An applicant who satisfies the requirements of [section 16(2)] shall meet with the department within 30 days of approval of the voluntary cleanup plan to negotiate an apportionment of liability for the site. The burden is on the applicant to show how the applicant's liability should be apportioned. In apportioning the liability of the applicant under this section, the department shall balance all of the following factors:

(a) the extent to which the applicant caused the release of the hazardous or deleterious substance;

(b) the extent to which an applicant's contribution to the release of a hazardous or deleterious substance can be diminished;

(c) the amount of the hazardous or deleterious substance involved;

(d) the degree of toxicity of the hazardous or deleterious substance involved;

(e) the degree of involvement of and care exercised by the applicant in manufacturing, treating, transporting, or disposing of the hazardous or deleterious substance;

(f) the degree of cooperation by the applicant with state or local officials to prevent any harm to the public health, safety, or welfare or to the environment; and

(g) the applicant's knowledge of the hazardous nature of

the substance.

(2) Once the department and the applicant have negotiated an apportionment of the applicant's liability, the applicant has a right of reimbursement subject to the requirements and limitations of [section 18].

NEW SECTION. Section 18. Claims for and limitations on reimbursement. (1) After completion of the voluntary cleanup plan approved by the department, the applicant may apply to and must, in accordance with this section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement must be subject to the following requirements and limitations:

(a) The applicant shall complete remediation prior to making a claim for reimbursement.

(b) The reimbursement may not exceed 90% of eligible costs up to a maximum of \$300,000 per facility.

(c) The claim for reimbursement may not include legal fees or department costs incurred in the oversight of the voluntary cleanup plan.

(2) For purposes of this section, "eligible costs" means costs in excess of an applicant's proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium.

(3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable parties to recover those costs.

(4) If the abandoned mines state special revenue account does not contain sufficient money to pay received claims for reimbursement, the abandoned mines state special revenue account and the department are not liable for making any reimbursement at that time. All claims are subject to appropriations to the abandoned mines state special revenue account.

NEW SECTION. Section 19. Abandoned mines state special revenue account created. (1) There is an abandoned mines state special revenue account within the state special revenue account fund established in 17-2-102.

(2) There must be paid into the abandoned mines state special revenue account money allocated from the metalliferous mines license tax pursuant to 15-37-117.

(3) Deposits to the abandoned mines state special revenue account must be placed in short-term investments. The interest on short-term investments must be deposited in the abandoned mines state special revenue account.

(4) The purpose of the abandoned mines state special revenue account is to provide the funding to the department of health and environmental sciences for the cleanup and reclamation of sites eligible for the pilot program in [sections 14 through

20].

NEW SECTION. Section 20. Incorporation into study process -- report to legislature. The department of health and environmental sciences and applicants participating in the pilot program shall submit reports to the 55th legislature detailing the success of and difficulties with the operation of the pilot program.

Section 21. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) ~~to the state resource indemnity trust fund, 15.5% to the abandoned mines state special revenue account provided for in [section 19], 8.5%~~ of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

NEW SECTION. Section 22. Coordination instruction. If House Bill No. 569 and [this act] are both passed and approved, the amendment to 15-37-117(1)(c) in House Bill No. 569, relating to the percentage allocation to the resource indemnity trust fund, is void."

Renumber: subsequent sections

18. Page 33, line 18.

Strike: "3"

Insert: "4"

Strike: "11"

Insert: "12"

19. Page 33, line 19.

Strike: "3"

Insert: "4"

20. Page 33, line 20.

Strike: "11"

Insert: "12"

21. Page 33, line 27.

Strike: "2"

Insert: "4"

Strike: "10"

Insert: "12"

22. Page 34, line 4

Following: "TERMINATION."

Insert: "(1)"

Strike: "2"

Insert: "4"

Strike: "10"

Insert: "12"

23. Page 34.

Following: line 5

Insert: "(2) [Sections 14 through 21] terminate June 30, 1997."

And that this Free Conference Committee report be adopted.

For the Senate:

Grosfield

Chair

Lynch

Foster

Amd. Coord.

Sec. of Senate

For the House:

Orr

Chair

Knox

Tuss

Free Conference Committee
on SB 382
Report No. 1', April 12, 1995

Page 1 of 8

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 382, met and considered:

SB 382 in its entirety

We recommend that SB 382 (reference copy as amended - salmon) be amended as follows:

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Following: "PROCESS;"

Insert: "ESTABLISHING THE MIXED FUNDING PILOT PROGRAM;"

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Following: "SECTIONS"

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Following: "75-10-701"

Insert: ", "

3. Title, line 10.

Strike: "AND"

Following: "~~85-1-604~~,"

Insert: "AND 75-10-722,"

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(2) Based on this record, the department ~~shall~~ may require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

ADOPT

REJECT

SB 382
FCCR #1

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(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical onsite construction of the remedial action.

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Insert: "8"

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Insert: "10(1) "

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Insert: "8"

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Strike: "5(3)"

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Following: line 10

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(2) The legislature further intends that the pilot program provide necessary data related to:

- (a) actual costs incurred in the remediation of facilities;
- (b) the costs associated with the elimination of joint and several liability;
- (c) the potential use of resource indemnity trust fund money in remediating facilities;
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(2) Any site remediated under this pilot program must meet

the following criteria:

(a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease purchase agreement or an option to purchase property where the facility is located.

(b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of [sections 7 and 8].

(c) The department has accepted and approved the application for a voluntary cleanup plan in accordance with the provisions of [sections 6 through 10].

(3) The department and the applicant shall negotiate an apportionment of the applicant's liability pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the applicant's apportioned liability. If the applicant disagrees with the department's determination of the applicant's proportionate share of liability, the applicant may appeal the department's decision in accordance with the requirements of [section 6(4)].

(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on the department of state lands' abandoned hard-rock mine priority list and the department approves more than three plans, the department shall select three plans to incorporate into the pilot program on a priority basis as determined by the date of submittal of a complete application.

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(b) the extent to which an applicant's contribution to the release of a hazardous or deleterious substance can be diminished;

(c) the amount of the hazardous or deleterious substance involved;

(d) the degree of toxicity of the hazardous or deleterious substance involved;

(e) the degree of involvement of and care exercised by the applicant in manufacturing, treating, transporting, or disposing of the hazardous or deleterious substance;

(f) the degree of cooperation by the applicant with state or local officials to prevent any harm to the public health, safety, or welfare or to the environment; and

(g) the applicant's knowledge of the hazardous nature of

the substance.

(2) Once the department and the applicant have negotiated an apportionment of the applicant's liability, the applicant has a right of reimbursement subject to the requirements and limitations of [section 18].

NEW SECTION. Section 18. Claims for and limitations on reimbursement. (1) After completion of the voluntary cleanup plan approved by the department, the applicant may apply to and must, in accordance with this section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement must be subject to the following requirements and limitations:

(a) The applicant shall complete remediation prior to making a claim for reimbursement.

(b) The reimbursement may not exceed 90% of eligible costs up to a maximum of \$300,000 per facility.

(c) The claim for reimbursement may not include legal fees or department costs incurred in the oversight of the voluntary cleanup plan.

(2) For purposes of this section, "eligible costs" means costs in excess of an applicant's proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium.

(3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable parties to recover those costs.

(4) If the abandoned mines state special revenue account does not contain sufficient money to pay received claims for reimbursement, the abandoned mines state special revenue account and the department are not liable for making any reimbursement at that time. All claims are subject to appropriations to the abandoned mines state special revenue account.

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(3) Deposits to the abandoned mines state special revenue account must be placed in short-term investments. The interest on short-term investments must be deposited in the abandoned mines state special revenue account.

(4) The purpose of the abandoned mines state special revenue account is to provide the funding to the department of health and environmental sciences for the cleanup and reclamation of sites eligible for the pilot program in [sections 14 through

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NEW SECTION. Section 20. Incorporation into study process -- report to legislature. The department of health and environmental sciences and applicants participating in the pilot program shall submit reports to the 55th legislature detailing the success of and difficulties with the operation of the pilot program.

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"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) ~~to the state resource indemnity trust fund, 15.5% to the abandoned mines state special revenue account provided for in [section 19], 8.5%~~ of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

NEW SECTION. Section 22. Coordination instruction. If House Bill No. 569 and [this act] are both passed and approved, the amendment to 15-37-117(1)(c) in House Bill No. 569, relating to the percentage allocation to the resource indemnity trust fund, is void."

Renumber: subsequent sections

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Insert: "4"

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Strike: "3"

Insert: "4"

20. Page 33, line 20.

Strike: "11"

Insert: "12"

21. Page 33, line 27.

Strike: "2"

Insert: "4"

Strike: "10"

Insert: "12"

22. Page 34, line 4

Following: "TERMINATION."

Insert: "(1)"

Strike: "2"

Insert: "4"

Strike: "10"

Insert: "12"

23. Page 34.

Following: line 5

Insert: "(2) [Sections 14 through 21] terminate June 30, 1997."

And that this Free Conference Committee report be adopted.

For the Senate:

Grosfield

Chair

Lynch

Foster

Amd. Coord.

Sec. of Senate

For the House:

Orr

Chair

Knox

Tuss

SENATE BILL NO. 382

INTRODUCED BY HARP, BECK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~NATURAL RESOURCE AND ENVIRONMENTAL LAWS~~ THE DEGREE OF METHOD OF SELECTING CLEANUP REQUIRED FOR REMEDIAL ACTIONS; CREATING A VOLUNTARY CLEANUP AND REDEVELOPMENT PROCESS; ESTABLISHING THE MIXED FUNDING PILOT PROGRAM; REQUIRING THE DEPARTMENT TO SET UP A COLLABORATIVE PROCESS THAT ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY AND RELATED FUNDING NECESSARY TO CLEAN UP STATE SUPERFUND SITES; AMENDING SECTIONS 15-38-202, 75-10-701, 75-10-704, 75-10-711, SECTION SECTIONS 15-37-117, 75-10-701, AND 75-10-715, 75-10-721, 75-10-722, 75-10-724, AND 85-1-604, AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE DATES, AND A TERMINATION DATE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. ~~Section 15-38-202, MCA, is amended to read:~~

~~"15-38-202. (Temporary) Investment of resource indemnity trust fund expenditure minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.~~

~~(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:~~

~~(i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;~~

~~(ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;~~

1 ~~(iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in~~
2 ~~17-7-502, from the renewable resource grant and loan program state special revenue account to support~~
3 ~~the operations of the environmental science water quality instructional programs at northern Montana~~
4 ~~college to be used for support costs, for matching funds necessary to attract additional funds to further~~
5 ~~expand statewide impact, and for enhancement of the facilities related to the programs;~~

6 ~~(iv) \$1,025,000 to be deposited into the renewable resource grant and loan program state special~~
7 ~~revenue account, created by 85-1-604, for the purpose of making grants;~~

8 ~~(v) \$2,200,000 to be deposited into the reclamation and development grants state special revenue~~
9 ~~account, created by 90-2-1104, for the purpose of making grants; and~~

10 ~~(vi) beginning in fiscal year 1994, \$250,000 to be deposited into the water storage state special~~
11 ~~revenue account created by 85-1-631.~~

12 ~~(b) The remainder of the interest income is allocated as follows:~~

13 ~~(i) Thirty eight percent of the interest income of the resource indemnity trust fund must be~~
14 ~~allocated to the renewable resource grant and loan program state special revenue account created by~~
15 ~~85-1-604.~~

16 ~~(ii) Fifteen percent of the interest income of the resource indemnity trust fund must be allocated to~~
17 ~~the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

18 ~~(iii) Forty one and one half percent of the interest income from the resource indemnity trust fund~~
19 ~~must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

20 ~~(iv) Five and one half percent of the interest income of the resource indemnity trust fund must be~~
21 ~~allocated to the environmental quality protection fund provided for in 75-10-704.~~

22 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
23 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
24 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
25 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
26 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
27 ~~legislative appropriation process or otherwise during a legislative session.~~

28 ~~15-38-202. (Effective July 1, 1995) Investment of resource indemnity trust fund expenditure~~
29 ~~minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into~~
30 ~~the fund under the provisions of 15-37-117, must be invested at the discretion of the board of investments.~~

1 All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund
2 until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and
3 expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts must be
4 appropriated by the legislature and expended, provided that the balance in the fund may never be less than
5 \$100 million.

6 (2) (a) At the beginning of each biennium, there is allocated from the interest income of the
7 resource indemnity trust fund:

8 (i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the
9 conditions of 75-1-1101;

10 (ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account
11 pursuant to the conditions of 82-11-161;

12 (iii) beginning in fiscal year 1995, \$240,000, which is statutorily appropriated, as provided in
13 17-7-502, from the renewable resource grant and loan program state special revenue account to support
14 the operations of the environmental science water quality instructional programs at northern Montana
15 college to be used for support costs, for matching funds necessary to attract additional funds to further
16 expand statewide impact, and for enhancement of the facilities related to the programs;

17 (iv) beginning in fiscal year 1996 ~~1997~~, \$2 ~~\$1~~ million to be deposited into the renewable resource
18 grant and loan program state special revenue account, created by 85-1-604, for the purpose of making
19 grants;

20 (v) beginning in fiscal year 1996 ~~1997~~, \$3 ~~\$2~~ million to be deposited into the reclamation and
21 development grants state special revenue account, created by 90-2-1104, for the purpose of making grants;
22 and

23 (vi) beginning in fiscal year 1996, \$500,000 to be deposited into the water storage state special
24 revenue account created by 85-1-631.

25 (b) The remainder of the interest income is allocated as follows:

26 (i) ~~Thirty six~~ Sixteen percent of the interest income of the resource indemnity trust fund must be
27 allocated to the renewable resource grant and loan program state special revenue account created by
28 ~~85-1-604~~.

29 (ii) ~~Eighteen percent of the interest income of the resource indemnity trust fund must be allocated~~
30 ~~to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.~~

1 ~~(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated~~
2 ~~to the reclamation and development grants account provided for in 90-2-1104.~~

3 ~~(iv) Six Sixteen percent of the interest income of the resource indemnity trust fund must be~~
4 ~~allocated to the environmental quality protection fund provided for in 75-10-704.~~

5 ~~(v) Ten percent of the interest income from the resource indemnity trust fund must be allocated~~
6 ~~to the abandoned mine state special revenue account provided in [section 9].~~

7 ~~(3) Any formal budget document prepared by the legislature or the executive branch that proposes~~
8 ~~to appropriate funds from the resource indemnity trust interest account other than as provided for by the~~
9 ~~allocations in subsection (2) must specify the amount of money from each allocation that is proposed to~~
10 ~~be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and~~
11 ~~publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the~~
12 ~~legislative appropriation process or otherwise during a legislative session."~~

13
14 **Section 2.** ~~Section 75-10-701, MCA, is amended to read:~~

15 ~~"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following~~
16 ~~definitions apply:~~

17 ~~(1) "Department" means the department of health and environmental sciences provided for in Title~~
18 ~~2, chapter 15, part 21.~~

19 ~~(2) "Director" means the director of the department of health and environmental sciences.~~

20 ~~(3) "Disposed" or "disposal" means:~~

21 ~~(a) an affirmative act resulting in a discharge, deposit, injection, dumping, storing, spilling, leaking,~~
22 ~~or placing of any hazardous or deleterious substance on any land or water so that the hazardous or~~
23 ~~deleterious substance may enter the environment, be emitted into the air, or be discharged into any waters,~~
24 ~~including ground waters.~~

25 ~~(b) Disposed or disposal does not include the passive migration, movement, or dispersion of a~~
26 ~~hazardous or deleterious substance or any constituent through the environment that occurs after the initial~~
27 ~~disposal of the hazardous or deleterious substance into the environment.~~

28 ~~(3)(4) "Environment" means any surface water, ground water, drinking water supply, land surface~~
29 ~~or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of~~
30 ~~Montana.~~

1 ~~(4) (a)(5) (a) "Facility" means:~~

2 ~~(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer~~
3 ~~or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container,~~
4 ~~motor vehicle, rolling stock, or aircraft; or~~

5 ~~(ii) any site or area where a hazardous or deleterious substance has been deposited, stored,~~
6 ~~disposed of, placed, or otherwise come to be located.~~

7 ~~(b) The term does not include any consumer product in consumer use.~~

8 ~~(5)(6) "Fund" means the environmental quality protection fund established in 75-10-704.~~

9 ~~(6)(7) (a) "Hazardous or deleterious substance" means a substance that because of its quantity,~~
10 ~~concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial~~
11 ~~threat to public health, safety, or welfare or the environment and is:~~

12 ~~(a)(i) a substance that is defined as a hazardous substance by section 101(14) of the federal~~
13 ~~Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14),~~
14 ~~as amended;~~

15 ~~(b)(iii) a substance identified by the administrator of the United States environmental protection~~
16 ~~agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;~~

17 ~~(c)(iii) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the~~
18 ~~Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance~~
19 ~~listed or identified in 40 CFR 261; or~~

20 ~~(d)(iv) any petroleum product.~~

21 ~~(b) Hazardous or deleterious substance does not include any waste or constituent, the regulation~~
22 ~~of which under the Solid Waste Disposal Act, 42 U.S.C. 6901, has been suspended by an act of congress~~
23 ~~or that has been excluded from the definition of hazardous waste under 40 CFR 261.4(b)(7).~~

24 ~~(7)(8) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water,~~
25 ~~drinking water supplies, and any other such resources within the state of Montana owned, managed, held~~
26 ~~in trust or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the~~
27 ~~state.~~

28 ~~(8) (a)(9) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or~~
29 ~~exercising control over the operation of a facility.~~

30 ~~(b) The term does not include holding the indicia of ownership of a facility primarily to protect a~~

1 security interest in the facility or other location unless the holder has participated in the management of the
2 facility. The term does not apply to the state or a local government that acquired ownership or control
3 through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the
4 government acquires title by virtue of its function as sovereign, unless the state or local government has
5 caused or contributed to the release or threatened release of a hazardous or deleterious substance from the
6 facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1
7 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been
8 released into the environment upstream of the dam and has subsequently come to be located in the
9 reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for
10 a release or threatened release under 75-10-715(1).

11 ~~(9)(10)~~ "Person" means an individual, trust, firm, joint stock company, joint venture, consortium,
12 commercial entity, partnership, association, corporation, commission, state or state agency, political
13 subdivision of the state, interstate body, or the federal government, including a federal agency.

14 ~~(10)(11)~~ "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
15 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any
16 other petroleum related product or waste or fraction thereof that is liquid at standard conditions of
17 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

18 ~~(11)(12)~~ "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
19 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into
20 the environment (including the abandonment or discarding of barrels, containers, and other closed
21 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the
22 indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in
23 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
24 80-10-101(2) when applied as part of accepted agricultural practice.

25 ~~(12)(13)~~ "Remedial action" includes all notification, investigation, administration, monitoring,
26 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
27 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
28 threatened release.

29 ~~(13)(14)~~ "Remedial action contract" means a written contract or agreement entered into by a
30 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order of

request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(14)(15) "Remedial action contractor" means:~~

~~(a) any person who enters into and is carrying out a remedial action contract; or~~

~~(b) any person who is retained or hired by a person described in subsection (14)(a) (15)(a) to provide services relating to a remedial action.~~

~~(15)(16) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."~~

Section 3. ~~Section 75-10-704, MCA, is amended to read:~~

~~"75-10-704. Environmental quality protection fund.~~ ~~(1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part. The use of the fund is limited to remediation of sites not listed on the national priorities list.~~

~~(2) The fund may be used by the department only to:~~

~~(a) provide the department with funding for remedial actions to the extent that parties liable under 75-10-715 cannot pay all remedial action costs required to be expended to remedy releases at a facility;~~

~~(b) reimburse liable parties whose contributions to remedial action costs exceed their proportionate liability;~~

~~(c) carry out the provisions of this part and provide for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances; and~~

~~(d) carry out the provisions of this part.~~

~~(3) The department shall:~~

~~(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and~~

~~(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.~~

~~(4) There must be deposited in the fund:~~

1 ~~(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs~~
2 ~~recovered pursuant to 75-10-715;~~

3 ~~(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed~~
4 ~~pursuant to 75-10-711(5);~~

5 ~~(c) funds appropriated to the fund by the legislature; and~~

6 ~~(d) funds received from the interest income of the resource indemnity trust fund pursuant to~~
7 ~~15-38-202.~~

8 ~~(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and~~
9 ~~additional money remains in the fund, the department shall seek additional authority to spend money from~~
10 ~~the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.~~

11 ~~(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the~~
12 ~~department may apply to the governor for a grant from the environmental contingency account established~~
13 ~~pursuant to 75-1-1101."~~

14
15 **~~Section 4. Section 75-10-711, MCA, is amended to read:~~**

16 **~~"75-10-711. Remedial action orders penalties judicial proceedings. (1) The department may~~**
17 **~~take remedial action whenever:~~**

18 ~~(a) there has been a release or there is a substantial threat of a release into the environment that~~
19 ~~may present an imminent and substantial endangerment to the public health, welfare, or safety or the~~
20 ~~environment; and~~

21 ~~(b) the appropriate remedial action will not be done properly and expeditiously by any person liable~~
22 ~~under 75-10-715(1).~~

23 ~~(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to~~
24 ~~believe that a release has occurred or is about to occur, the department may undertake remedial action in~~
25 ~~the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by~~
26 ~~75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the~~
27 ~~release or the threat of release and the extent and imminence of the danger to the public health, safety,~~
28 ~~or welfare or the environment.~~

29 ~~(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and~~
30 ~~abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund~~

1 to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the
2 person or persons liable for the release or threatened release and:

3 (a) is unable to determine the identity of the liable person or persons in a manner consistent with
4 the need to take timely remedial action; or

5 (b) the person or persons determined by the department to be liable under 75-10-715(1) have been
6 informed in writing of the department's determination and have been requested by the department to take
7 appropriate remedial action but are unable or unwilling to take action in a timely manner; and

8 (c) the written notice to each person informs him that person that if he the person is subsequently
9 found liable pursuant to 75-10-715(1), he the person may be required to reimburse the fund for the state's
10 remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

11 (4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to
12 believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare
13 or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1)
14 cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health,
15 safety, or welfare or the environment.

16 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707
17 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than
18 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining
19 the amount of any penalty assessed, the court may take into account:

20 (i) the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the
21 person liable under 75-10-715(1), his the person's ability to pay;

22 (ii) any prior history of such violations;

23 (iii) the degree of culpability;

24 (iv) the economic benefit or savings, if any, resulting from the noncompliance; and

25 (v) any other matters as that justice may require.

26 (b) Civil penalties collected under this subsection must be deposited into the environmental quality
27 protection fund established in 75-10-704.

28 (6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the
29 following actions:

30 (a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

1 ~~(b) an action to enforce an order issued under 75-10-707 or this section;~~

2 ~~(c) an action to recover a civil penalty for violation of or failure to comply with an order issued~~
3 ~~under 75-10-707 or this section; or~~

4 ~~(d) an action by a person to whom an order has been issued to determine the validity of the order,~~
5 ~~only if the person has been in compliance and continues in compliance with the order pending decision of~~
6 ~~the court.~~

7 ~~(7) In considering objections raised in a judicial action regarding orders issued under this part, the~~
8 ~~court shall uphold and enforce an order issued by the department unless the objecting party can~~
9 ~~demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary~~
10 ~~and capricious or otherwise not in accordance with law.~~

11 ~~(8) Instead of issuing a notification or an order under this section, the department may bring an~~
12 ~~action for legal or equitable relief in the district court of the county where the release or threatened release~~
13 ~~occurred or in the first judicial district as may be necessary to abate any imminent and substantial~~
14 ~~endangerment to the public health, safety, or welfare or the environment resulting from the release or~~
15 ~~threatened release.~~

16 ~~(9) The Except as provided in 75-10-712, the department may not take remedial action pursuant~~
17 ~~to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response,~~
18 ~~Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial~~
19 ~~action is necessary to carry out the purposes of this part as amended. This subsection may not restrict the~~
20 ~~department from entering into or carrying out cooperative agreements under Title 75, chapter 10, part 6,~~
21 ~~or from accepting any deferral to the state of a CERCLA site from the U.S. environmental protection~~
22 ~~agency."~~

23
24 **Section 5.** ~~Section 75-10-715, MCA, is amended to read:~~

25 ~~"75-10-715. Liability reimbursement and penalties proceedings defenses. (1)~~

26 ~~Notwithstanding any other provision of law and subject only to the defenses set forth in subsection (6),~~
27 ~~the following persons are jointly and severally liable for a release or threatened release of a hazardous or~~
28 ~~deleterious substance from a facility:~~

29 ~~(a) a person who owns or operates a facility where a hazardous or deleterious substance was~~
30 ~~disposed of;~~

~~(b)(a) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;~~

~~(c)(b) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment;~~
and

~~(d)(e) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.~~

~~(2) A person identified in subsection (1) is proportionately liable for the following costs:~~

~~(a) all remedial action costs incurred by the state; and~~

~~(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.~~

~~(3) If the person liable under 75-10-715(1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.~~

~~(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1) through (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the any person liable under 75-10-715(1) resides or has its principal place of business or in the district court of the first judicial district.~~

~~(5) No A person is not liable under subsections (1) through (3) if that person can establish by a preponderance of the evidence that:~~

~~(a) the department failed to follow the notice provisions of 75-10-711 when required;~~

~~(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed~~

1 ~~any hazardous or deleterious substance or over which the person had any ownership, authority, or control~~
2 ~~and was not caused by any action or omission of the person;~~

3 ~~(c) the release or threatened release occurred solely as a result of:~~

4 ~~(i) an act or omission of a third party other than either an employee or agent of the person; or~~

5 ~~(ii) an act or omission of a third party other than one whose act or omission occurs in connection~~
6 ~~with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by~~
7 ~~a preponderance of the evidence that he the person:~~

8 ~~(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking~~
9 ~~into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts~~
10 ~~and circumstances; and~~

11 ~~(B) took precautions against foreseeable acts or omissions of a third party and the consequences~~
12 ~~that could foreseeably result from those acts or omissions;~~

13 ~~(d) the release or threat of release occurred solely as the result of an act of God or an act of war;~~

14 ~~(e) the release or threatened release was from a facility for which a permit had been issued by the~~
15 ~~department, the hazardous or deleterious substance was specifically identified in the permit, and the release~~
16 ~~was within the limits allowed in the permit;~~

17 ~~(f) in the case of assessment of penalties under subsection (3), that factors beyond the control of~~
18 ~~the person prevented the person from taking timely remedial action; or~~

19 ~~(g) the person accepted only household refuse (garbage, trash, or septic tank sanitary wastes~~
20 ~~generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to~~
21 ~~a solid waste disposal facility, unless that person knew or reasonably should have known that the~~
22 ~~hazardous or deleterious substance was present in the refuse.~~

23 ~~(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is~~
24 ~~not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real~~
25 ~~property on which the facility is located was acquired by the person after the disposal or placement of the~~
26 ~~hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances~~
27 ~~is also established by the person by a preponderance of the evidence:~~

28 ~~(i) At the time the person acquired the facility, the person did not know and had no reason to know~~
29 ~~that a hazardous or deleterious substance that is the subject of the release or threatened release was~~
30 ~~disposed of on, in, or at the facility.~~

1 ~~(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or~~
2 ~~through any other involuntary transfer or acquisition or through the exercise of eminent domain authority~~
3 ~~by purchase or condemnation.~~

4 ~~(iii) The person acquired the facility by inheritance or bequest.~~

5 ~~(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through~~
6 ~~(6)(a)(iii), the person shall establish that he has satisfied the requirements of subsections (5)(c)(i) or~~
7 ~~(5)(c)(ii).~~

8 ~~(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the~~
9 ~~person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership~~
10 ~~and uses of the property consistent with good commercial or customary practice in an effort to minimize~~
11 ~~liability. For purposes of assessing this inquiry, the following must be taken into account:~~

12 ~~(i) any specialized knowledge or experience on the part of the person;~~

13 ~~(ii) the relationship of the purchase price to the value of the property if uncontaminated;~~

14 ~~(iii) commonly known or reasonably ascertainable information about the property;~~

15 ~~(iv) the obviousness of the presence or the likely presence of contamination on the property; and~~

16 ~~(v) the ability to detect the contamination by appropriate inspection.~~

17 ~~(d)(a) (i) Nothing in subsections (5)(b) and (5)(c) or in this subsection (6) may diminish the liability~~
18 ~~of a previous owner or operator of the facility who would otherwise be liable under this part.~~

19 ~~(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge~~
20 ~~of the release or threatened release of a hazardous or deleterious substance at the facility when the person~~
21 ~~owned the real property and then subsequently transferred ownership of the property to another person~~
22 ~~without disclosing the knowledge, the previous owner is liable under subsections (1) through (3) and no~~
23 ~~defense under subsection (5)(b) or (5)(c) is available to that person.~~

24 ~~(e)(b) Nothing in this subsection (6) affects the liability under this part of a person who, by any act~~
25 ~~or omission, caused or contributed to the release or threatened release of a hazardous or deleterious~~
26 ~~substance that is the subject of the action relating to the facility."~~

27
28 **SECTION 1. SECTION 75-10-701, MCA, IS AMENDED TO READ:**

29 **"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following
30 definitions apply:

1 (1) "Department" means the department of health and environmental sciences provided for in Title
2 2, chapter 15, part 21.

3 (2) "Director" means the director of the department of health and environmental sciences.

4 (3) "Environment" means any surface water, ground water, drinking water supply, land surface
5 or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of
6 Montana.

7 (4) (a) "Facility" means:

8 (i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer
9 or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container,
10 motor vehicle, rolling stock, or aircraft; or

11 (ii) any site or area where a hazardous or deleterious substance has been deposited, stored,
12 disposed of, placed, or otherwise come to be located.

13 (b) The term does not include any consumer product in consumer use.

14 (5) "Fund" means the environmental quality protection fund established in 75-10-704.

15 (6) "Hazardous or deleterious substance" means a substance that because of its quantity,
16 concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial
17 threat to public health, safety, or welfare or the environment and is:

18 (a) a substance that is defined as a hazardous substance by section 101(14) of the federal
19 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14),
20 as amended;

21 (b) a substance identified by the administrator of the United States environmental protection
22 agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

23 (c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource
24 Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or
25 identified in 40 CFR 261; or

26 (d) any petroleum product.

27 (7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking
28 water supplies, and any other such resources within the state of Montana owned, managed, held in trust
29 or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

30 (8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising

1 control over the operation of a facility.

2 (b) The term does not include holding the indicia of ownership of a facility primarily to protect a
3 security interest in the facility or other location unless the holder has participated in the management of the
4 facility. The term does not apply to the state or a local government that acquired ownership or control
5 through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the
6 government acquires title by virtue of its function as sovereign, unless the state or local government has
7 caused or contributed to the release or threatened release of a hazardous or deleterious substance from the
8 facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1
9 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been
10 released into the environment upstream of the dam and has subsequently come to be located in the
11 reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for
12 a release or threatened release under 75-10-715(1).

13 (9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium,
14 commercial entity, partnership, association, corporation, commission, state or state agency, political
15 subdivision of the state, interstate body, or the federal government, including a federal agency.

16 (10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities
17 subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any
18 other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of
19 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

20 (11) "Reasonably anticipated future uses" means likely future land or resource uses that take into
21 consideration:

22 (a) local land and resource use regulations, ordinances, restrictions, or covenants;

23 (b) historical and anticipated uses of the facility;

24 (c) patterns of development in the immediate area; and

25 (d) relevant indications of anticipated land use from the owner of the facility and local planning
26 officials.

27 ~~(11)~~(12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
28 injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into
29 the environment (including the abandonment or discarding of barrels, containers, and other closed
30 receptacles containing any hazardous or deleterious substance), but excludes releases confined to the

1 indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in
2 accordance with approved federal and state labels, and the use of commercial fertilizers as defined in
3 80-10-101(2) when applied as part of accepted agricultural practice.

4 ~~(12)~~(13) "Remedial action" includes all notification, investigation, administration, monitoring,
5 cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action,
6 health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or
7 threatened release.

8 ~~(13)~~(14) "Remedial action contract" means a written contract or agreement entered into by a
9 remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or
10 request issued by the department, the United States, or any federal agency, to provide a remedial action
11 with respect to a release or threatened release of a hazardous or deleterious substance.

12 ~~(14)~~(15) "Remedial action contractor" means:

13 (a) any person who enters into and is carrying out a remedial action contract; or

14 (b) any person who is retained or hired by a person described in subsection ~~(14)~~(15)(a) to
15 provide services relating to a remedial action.

16 ~~(15)~~(16) "Remedial action costs" means reasonable costs that are attributable to or associated with
17 a remedial action at a facility, including but not limited to the costs of administration, investigation, legal
18 or enforcement activities, contracts, feasibility studies, or health studies."
19

20 **Section 2.** Section 75-10-721, MCA, is amended to read:

21 **"75-10-721. Degree of cleanup required -- permit exemption -- financial assurance.** (1) A remedial
22 action performed under this part or a voluntary cleanup under [sections ~~10 2 3 4~~ through ~~16 10 11 12~~]
23 must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened
24 release or further release of that substance that assures ~~present and future~~ protection of public health,
25 safety, and welfare and of the environment that is consistent with this section.

26 (2) In approving or carrying out remedial actions performed under this part, the department:

27 ~~(a) shall require cleanup consistent with applicable state or federal environmental requirements,~~
28 ~~criteria, or limitations;~~

29 ~~(b) shall consider and may require cleanup consistent with substantive state or federal~~
30 ~~environmental requirements, criteria, or limitations that are well suited to the site conditions; and~~

~~(c) shall select remedial actions that, at a minimum, protect the public health, safety, and welfare and the environment. A remedial action must be considered protective of the public health, safety, and welfare and of the environment when the amount of site specific risk reduction is proportionate to the total cost of the remedial action or when the remedial action reaches a level of risk reduction of 10 to the minus 4, whichever is more cost effective, and that:~~

~~(i) use permanent solutions;~~

~~(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and~~

~~(iii) are cost effective, taking into account the total short and long term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.~~

~~(3) To the extent consistent with the requirements of subsection (2), the department, in selecting remedial actions under this part, shall consider for each remedial action:~~

~~(a) technical practicability;~~

~~(b) long term and short term reliability; and~~

~~(c) local community and local government acceptance.~~

~~(4) To the extent consistent with the requirements of subsection (2), the department shall give equal consideration to engineering controls, institutional controls, and treatment.~~

~~(5) All remedial actions selected by the department under this part must be based on current land and resource uses unless the department can demonstrate on the administrative record that there are reasonably anticipated uses that would require remedial actions that provide for a higher level of protection for the public health, safety, and welfare, and for the environment. Only reasonably anticipated land and resource uses, as determined by applicable local land and resource use requirements, regulations, ordinances, restrictions or covenants, may be considered. (A) EXCEPT AS PROVIDED IN SUBSECTION (4), SHALL REQUIRE CLEANUP CONSISTENT WITH APPLICABLE STATE OR FEDERAL ENVIRONMENTAL REQUIREMENTS, CRITERIA, OR LIMITATIONS;~~

~~(B) MAY CONSIDER SUBSTANTIVE STATE OR FEDERAL ENVIRONMENTAL REQUIREMENTS, CRITERIA, OR LIMITATIONS THAT ARE RELEVANT TO THE SITE CONDITIONS; AND~~

~~(C) SHALL SELECT REMEDIAL ACTIONS, CONSIDERING PRESENT AND REASONABLY ANTICIPATED FUTURE USES, THAT:~~

1 (I) DEMONSTRATE ACCEPTABLE MITIGATION OF EXPOSURE TO RISKS TO THE PUBLIC HEALTH,
2 SAFETY, AND WELFARE AND THE ENVIRONMENT;

3 (II) ARE EFFECTIVE AND RELIABLE IN THE SHORT TERM AND THE LONG TERM;

4 (III) ARE TECHNICALLY PRACTICABLE AND IMPLEMENTABLE;

5 (IV) USE TREATMENT TECHNOLOGIES OR RESOURCE RECOVERY TECHNOLOGIES IF
6 PRACTICABLE, GIVING DUE CONSIDERATION TO INSTITUTIONAL AND ENGINEERING CONTROLS; AND

7 (V) ARE COST-EFFECTIVE.

8 (3) IN SELECTING REMEDIAL ACTIONS, THE DEPARTMENT SHALL CONSIDER THE
9 ACCEPTABILITY OF THE ACTIONS TO THE AFFECTED COMMUNITY, AS INDICATED BY COMMUNITY
10 MEMBERS AND THE LOCAL GOVERNMENT.

11 (4) THE DEPARTMENT MAY SELECT A REMEDIAL ACTION THAT DOES NOT MEET AN
12 APPLICABLE STATE ENVIRONMENTAL REQUIREMENT, CRITERIA, OR LIMITATION UNDER ANY ONE OF
13 THE FOLLOWING CIRCUMSTANCES:

14 (A) THE REMEDIAL ACTION IS AN INTERIM MEASURE AND WILL BECOME PART OF A TOTAL
15 REMEDIAL ACTION THAT WILL ATTAIN THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION.

16 (B) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION WILL
17 RESULT IN GREATER RISK TO HUMAN HEALTH AND THE ENVIRONMENT THAN OTHER REMEDIAL
18 ACTION ALTERNATIVES.

19 (C) COMPLIANCE WITH THE APPLICABLE REQUIREMENT, CRITERIA, OR LIMITATION IS
20 TECHNICALLY IMPRACTICABLE FROM AN ENGINEERING PERSPECTIVE.

21 (D) THE REMEDIAL ACTION WILL ATTAIN A STANDARD OF PERFORMANCE THAT IS
22 EQUIVALENT TO THAT REQUIRED UNDER THE OTHERWISE APPLICABLE REQUIREMENT, CRITERIA, OR
23 LIMITATION THROUGH USE OF ANOTHER METHOD OR APPROACH.

24 (E) COMPLIANCE WITH THE REQUIREMENT WOULD NOT BE COST-EFFECTIVE.

25 (5) FOR PURPOSES OF THIS SECTION, COST-EFFECTIVENESS MUST BE DETERMINED THROUGH
26 AN ANALYSIS OF INCREMENTAL COSTS AND INCREMENTAL RISK REDUCTION AND OTHER BENEFITS
27 OF ALTERNATIVES CONSIDERED, TAKING INTO ACCOUNT THE TOTAL ANTICIPATED SHORT-TERM AND
28 LONG-TERM COSTS OF REMEDIAL ACTION ALTERNATIVES CONSIDERED, INCLUDING THE TOTAL
29 ANTICIPATED COST OF OPERATION AND MAINTENANCE ACTIVITIES.

30 ~~(3)(6)~~ The department ~~may shall~~ MAY exempt any portion of a remedial action that is conducted

1 entirely on site from a state or local permit that would, in the absence of the remedial action, be required
2 if the remedial action is carried out in accordance with the standards established under ~~subsection (1)~~ THIS
3 SECTION and this part.

4 ~~(4)(7)~~ The department may require financial assurance from a liable person in an amount that the
5 department determines will ensure the long-term operation and maintenance of the remedial action site.
6 The liable person shall provide the financial assurance by any one method or combination of methods
7 satisfactory to the department, including but not limited to insurance, guarantee, performance or other
8 surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."

9
10 ~~Section 7. Section 75-10-722, MCA, is amended to read:~~

11 ~~"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the~~
12 ~~state's remedial action costs.~~

13 ~~(2) Based on this record, the department shall may require a person liable under 75-10-715 to pay~~
14 ~~the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).~~

15 ~~(3) If the state's remedial action costs and penalties are not paid by the liable person to the~~
16 ~~department within 60 days after receipt of notice that the costs and penalties are due, the department shall~~
17 ~~bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.~~

18 ~~(4) An action to recover remedial action costs may be brought under this section at any time after~~
19 ~~any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability~~
20 ~~for remedial action costs that is binding on any subsequent action or actions to recover further remedial~~
21 ~~action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show~~
22 ~~on the record that the costs are not reasonable and are not consistent with this part.~~

23 ~~(5) An initial action for recovery of remedial action costs must be commenced within 6 years after~~
24 ~~initiation of physical onsite construction of the remedial action.~~

25 ~~(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be~~
26 ~~deposited into the environmental quality protection fund established in 75-10-704."~~

27
28 ~~Section 8. Section 75-10-724, MCA, is amended to read:~~

29 ~~"75-10-724. Liability apportionment and contribution. (1) Any person held jointly and severally~~
30 ~~liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties~~

1 ~~as provided in this section. The burden is on each liable person to show how his liability should be~~
2 ~~apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider~~
3 ~~in any action initiated under 75 10 715 by the department or in any action initiated under subsection (2)~~
4 ~~by any person or persons liable under 75 10 715(1), the trier of fact shall determine the proportionate share~~
5 ~~of the aggregate liability for each person who is found liable under 75 10 715(1). For purposes of~~
6 ~~determining the proportionate share of the aggregate liability, the trier of fact shall consider, for each person~~
7 ~~found liable under 75 10 715(1), the following:~~

8 ~~(a) the extent to which the each person's contribution to the release of a hazardous or deleterious~~
9 ~~substance can be distinguished;~~

10 ~~(b) the amount of hazardous or deleterious substance involved;~~

11 ~~(c) the degree of toxicity of the hazardous or deleterious substance involved;~~

12 ~~(d) the degree of involvement of and care exercised by the each person in manufacturing, treating,~~
13 ~~transporting, or disposing of the hazardous or deleterious substance;~~

14 ~~(e) the degree of cooperation by the each person with federal, state, or local officials to prevent~~
15 ~~any harm to the public health, safety, or welfare or the environment; and~~

16 ~~(f) knowledge by the each person of the hazardous nature of the substance; and~~

17 ~~(g) any remedial actions voluntarily taken by a person.~~

18 ~~(2) If a person is held jointly and severally liable under 75 10 715 and establishes a proportionate~~
19 ~~share of the aggregate liability, the person has the right of contribution from any other liable person. If for~~
20 ~~any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of~~
21 ~~the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid~~
22 ~~portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action~~
23 ~~for contribution from the noncontributing person. A person liable under 75 10 715(1) may have a right of~~
24 ~~contribution for the recovery of the remedial action costs incurred by a person under this part against any~~
25 ~~other nonsettling party found liable under 75 10 715(1) in the proportionate shares determined under~~
26 ~~subsection (1).~~

27 ~~(3) For sites not listed on the national priorities list, if for any reason all or part of the contribution~~
28 ~~from a person liable for contribution cannot be obtained, a person may apply to and must, in accordance~~
29 ~~with this subsection, receive reimbursement from the department from the environmental quality protection~~
30 ~~fund established in 75 10 704. If the environmental quality protection fund does not contain sufficient~~

~~money to pay received claims for reimbursement, the fund and the department are not liable for making any reimbursement at that time. When the fund contains sufficient money, approved claims must be subsequently reimbursed in the order in which they were approved by the department. The department shall approve claims for reimbursement of remedial action costs under this subsection unless the remedial action costs are unreasonable, unnecessary, or inconsistent with this part.~~

~~(4) A person who has incurred remedial action costs may seek to recover those costs from any person who is liable or potentially liable under 75-10-715. A person who is liable under this subsection is not liable for more than the person's proportionate share of the aggregate liability determined in accordance with the criteria in subsection (1). Subsections (3) and (4) of 75-10-714 apply to any actions under this subsection."~~

~~**NEW SECTION. Section 9. Abandoned mine state special revenue account created.** (1) There is an abandoned mine special revenue account within the state special revenue account fund established in 17-2-102.~~

~~(2) There must be paid into the abandoned mine state special revenue account money allocated from the resource indemnity trust fund interest earnings pursuant to 15-38-202.~~

~~(3) Money that was not encumbered or expended from the abandoned mine state special revenue account during the previous biennium must remain in the account.~~

~~(4) Deposits to the abandoned mine state special revenue account are to be placed in short term investments and accrue interest, which must be deposited in the abandoned mine state special revenue account.~~

~~(5) The purpose of the abandoned mine state special revenue account is to provide the funding to the department of state lands for the cleanup and reclamation of abandoned mines.~~

~~(6) The department of state lands shall administer this section as an integral part of the abandoned mines program.~~

SECTION 3. SECTION 75-10-722, MCA, IS AMENDED TO READ:

"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department ~~shall~~ may require a person liable under 75-10-715 to pay

1 the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

2 (3) If the state's remedial action costs and penalties are not paid by the liable person to the
3 department within 60 days after receipt of notice that the costs and penalties are due, the department shall
4 bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

5 (4) An action to recover remedial action costs may be brought under this section at any time after
6 any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability
7 for remedial action costs that is binding on any subsequent action or actions to recover further remedial
8 action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show
9 on the record that the costs are not reasonable and are not consistent with this part.

10 (5) An initial action for recovery of remedial action costs must be commenced within 6 years after
11 initiation of physical onsite construction of the remedial action.

12 (6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be
13 deposited into the environmental quality protection fund established in 75-10-704."

14
15 NEW SECTION. Section 4. Short title. [Sections ~~40 2 3 4~~ through ~~46 10 11 12~~] may be cited as
16 the "Voluntary Cleanup and Redevelopment Act".

17
18 NEW SECTION. Section 5. Purpose -- legislative declaration. (1) (a) The purposes of [sections
19 ~~40 2 3 4~~ through ~~46 10 11 12~~] are to provide for the protection of the public health, welfare, and safety
20 and of the environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities ~~and sites~~
21 ~~that have been previously contaminated with hazardous or deleterious substances~~ WHERE RELEASES OR
22 THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST.

23 (b) The legislature further declares that this program is intended to permit and encourage voluntary
24 cleanup of ~~contaminated property~~ FACILITIES WHERE RELEASES OR THREATENED RELEASES OF
25 HAZARDOUS OR DELETERIOUS SUBSTANCES EXIST by providing interested persons with a method of
26 determining what the cleanup responsibilities will be for reuse or redevelopment of existing ~~sites~~
27 FACILITIES.

28 (2) The legislature further intends that this voluntary program:

29 (a) encourage and facilitate prompt cleanup activities;

30 (b) eliminate impediments to the sale or redevelopment of ~~previously contaminated property~~

1 FACILITIES WHERE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
2 SUBSTANCES EXIST; and

3 (c) minimize administrative processes and costs.

4
5 NEW SECTION. SECTION 6. ELIGIBILITY. (1) A FACILITY WHERE THERE HAS BEEN A RELEASE
6 OR THREATENED RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE THAT MAY PRESENT AN
7 IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR
8 THE ENVIRONMENT MAY BE ELIGIBLE TO FOLLOW FOR VOLUNTARY CLEANUP PROCEDURES UNDER
9 THIS PART, EXCEPT FOR FACILITIES THAT MEET ONE OF THE FOLLOWING CRITERIA AT THE TIME OF
10 APPLICATION FOR A VOLUNTARY CLEANUP PLAN:

11 (A) A FACILITY THAT IS LISTED OR PROPOSED FOR LISTING ON THE NATIONAL PRIORITIES LIST
12 PURSUANT TO 42 U.S.C. 9601, ET SEQ.;

13 (B) A FACILITY FOR WHICH AN ORDER HAS BEEN ISSUED OR CONSENT DECREE HAS BEEN
14 ENTERED INTO PURSUANT TO THIS PART;

15 (C) A FACILITY THAT IS THE SUBJECT OF AN AGENCY ORDER OR AN ACTION FILED IN
16 DISTRICT COURT BY ANY STATE AGENCY THAT ADDRESSES THE RELEASE OR THREATENED RELEASE
17 OF A HAZARDOUS OR DELETERIOUS SUBSTANCE; OR

18 (D) A FACILITY WHERE THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS OR
19 DELETERIOUS SUBSTANCE IS REGULATED BY THE MONTANA HAZARDOUS WASTE AND
20 UNDERGROUND STORAGE TANK ACT AND REGULATIONS UNDER THAT ACT;; OR

21 (E) A FACILITY THAT IS THE SUBJECT OF PENDING ACTION UNDER THIS PART BECAUSE THE
22 FACILITY HAS BEEN ISSUED A NOTICE COMMENCING A SPECIFIED PERIOD OF NEGOTIATIONS ON AN
23 ADMINISTRATIVE ORDER ON CONSENT.

24 (2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1)(B) THROUGH ~~(1)(D)~~ (1)(E), THE
25 DEPARTMENT MAY AGREE TO ACCEPT AND MAY APPROVE AN APPLICATION FOR A VOLUNTARY
26 CLEANUP PLAN FOR A FACILITY.

27 (3) THE DEPARTMENT MAY DETERMINE THAT A FACILITY THAT IS POTENTIALLY ELIGIBLE FOR
28 VOLUNTARY CLEANUP EXHIBITS COMPLEXITIES REGARDING PROTECTION OF PUBLIC HEALTH,
29 SAFETY, AND WELFARE AND THE ENVIRONMENT AND THAT THE COMPLEXITIES SHOULD BE
30 ADDRESSED UNDER AN ADMINISTRATIVE ORDER OR CONSENT DECREE PURSUANT TO THIS PART.

1 THIS DETERMINATION MAY BE MADE ONLY AFTER CONSULTATION WITH ANY PERSON DESIRING TO
2 CONDUCT A VOLUNTARY CLEANUP AT THE FACILITY.

3 (4) ~~EXCEPT AS PROVIDED IN SUBSECTION (2), IF IF AN APPLICANT THAT SUBMITS AN~~
4 APPLICATION FOR A VOLUNTARY CLEANUP PLAN DISAGREES WITH THE DEPARTMENT'S DECISION
5 TO REJECT THE FILING OF THE APPLICATION UNDER THIS SECTION SUBSECTION (1) OR (3), THE
6 APPLICANT MAY, WITHIN 30 DAYS OF RECEIPT OF THE DEPARTMENT'S WRITTEN DECISION
7 PURSUANT TO [SECTION 9 10], SUBMIT A WRITTEN REQUEST FOR A HEARING BEFORE THE BOARD
8 OF HEALTH AND ENVIRONMENTAL SCIENCES. IN REVIEWING A DEPARTMENT DECISION TO REJECT
9 AN APPLICATION UNDER SUBSECTION (1) OR (3), THE BOARD SHALL APPLY THE STANDARDS OF
10 REVIEW SPECIFIED IN 2-4-704. THE HEARING MUST BE HELD WITHIN 2 MONTHS AT THE REGULAR
11 MEETING OF THE BOARD OR AT THE TIME MUTUALLY AGREED TO BY THE BOARD, THE DEPARTMENT,
12 AND THE APPLICANT. THE HEARING AND ANY APPEALS MUST BE CONDUCTED IN ACCORDANCE
13 WITH THE CONTESTED CASE PROCEEDINGS PURSUANT TO TITLE 2, CHAPTER 4, PARTS 6 AND 7. A
14 HEARING BEFORE THE BOARD MAY NOT BE REQUESTED REGARDING A DECISION OF THE
15 DEPARTMENT MADE PURSUANT TO SUBSECTION (2).

16
17 NEW SECTION. Section 7. Voluntary cleanup plan AND REIMBURSEMENT OF REMEDIAL ACTION
18 COSTS. (1) A ~~ANY~~ person ~~who owns real property that has been contaminated with hazardous or~~
19 ~~deleterious substances or any person who may be liable under 75-10-715(1)~~ may submit an application for
20 the approval of a voluntary cleanup plan to the department under the provisions of this section.

21 (2). A voluntary cleanup plan must include:

22 (a) ~~an environmental assessment of the real property that describes the contamination, if any, on~~
23 ~~the property and the risk that the contamination currently poses to the public health, welfare, and safety~~
24 ~~and to the environment~~ FACILITY THAT INCLUDES THE INFORMATION REQUIRED IN [SECTION 6 7 8];

25 (b) a REMEDIATION proposal, if needed, for remedial actions consistent with THAT INCLUDES THE
26 INFORMATION REQUIRED IN [SECTION 6 7 8] AND THAT MEETS THE REQUIREMENTS OF 75-10-721.
27 ~~The proposal must provide a timetable for implementing the proposal and for monitoring the site after the~~
28 ~~proposed measures are completed.~~

29 (c) ~~a description of the manner in which the remedial action plan satisfies the cleanup requirements~~
30 ~~of 75-10-721 and a description of any current risk to the public health, welfare, or safety or to the~~

environment based upon the current or reasonably anticipated future use of the site; AND

(C) THE WRITTEN CONSENT OF CURRENT OWNERS OF THE FACILITY OR PROPERTY TO BOTH THE IMPLEMENTATION OF THE VOLUNTARY CLEANUP PLAN AND ACCESS TO THE FACILITY BY THE APPLICANT AND ITS AGENTS AND THE DEPARTMENT.

(3) THE APPLICANT SHALL REIMBURSE THE DEPARTMENT FOR ANY REMEDIAL ACTION COSTS THAT THE STATE INCURS IN THE REVIEW AND OVERSIGHT OF A VOLUNTARY CLEANUP PLAN.

(4) THE DEPARTMENT MAY APPROVE A VOLUNTARY CLEANUP PLAN THAT PROVIDES FOR PHASES OF REMEDIATION OR THAT ADDRESSES ONLY A PORTION OF THE FACILITY. TO THE EXTENT THAT THE ORIGINAL ENVIRONMENTAL ASSESSMENT REQUIRED UNDER [SECTION 6 7 8] ADDRESSES SUBSEQUENT PHASES OF REMEDIATION, THE APPLICANT MAY RELY ON THAT ASSESSMENT WHEN SUBMITTING VOLUNTARY CLEANUP PLANS FOR SUBSEQUENT PHASES OF REMEDIATION.

NEW SECTION. Section 8. ~~Environmental assessment~~ VOLUNTARY CLEANUP PLANS -- requirements. (1) The department may only accept ~~environmental assessments~~ VOLUNTARY CLEANUP PLANS under [sections ~~10 2 3 4~~ through ~~16 10 11 12~~] that are prepared by a qualified environmental professional. A qualified environmental professional is a person with education, training, and experience in preparing environmental studies and assessments.

(2) An environmental assessment described in this section must include the following information:

(a) the legal description of the site FACILITY and a map identifying the location and size of the ~~property~~ FACILITY AND RELEVANT FEATURES, SUCH AS PROPERTY BOUNDARIES, SURFACE TOPOGRAPHY, SURFACE AND SUBSURFACE STRUCTURES, AND UTILITY LINES;

(b) the physical characteristics of the site FACILITY and areas contiguous to the site FACILITY, including the location of any surface water bodies and ground water aquifers;

(c) the location of any wells located on the site or on areas within a one-half mile radius of the site and a description of the use of those wells;

(d) the current and reasonably anticipated future use of onsite ground AND SURFACE water;

(e) the operational history of the site FACILITY, INCLUDING OWNERSHIP, and the current use of ~~areas contiguous to the site~~ THE FACILITY, INCLUDING ANY READILY AVAILABLE AERIAL PHOTOGRAPHS FROM WITHIN THE STATE OF MONTANA;

(f) the current and reasonably anticipated future uses of the site FACILITY AND IMMEDIATELY

1 ADJACENT PROPERTIES;

2 (g) information ON THE METHODS AND RESULTS OF INVESTIGATIONS concerning the nature and
3 extent of any ~~contamination and~~ RELEASES OR THREATENED releases of hazardous or deleterious
4 substances that have occurred at the ~~site, including any impacts on areas contiguous to the site~~ FACILITY
5 AND A MAP SHOWING GENERAL AREAS AND CONCENTRATIONS OF HAZARDOUS OR DELETERIOUS
6 SUBSTANCES;

7 (h) any sampling results or other data that characterizes the soil, AIR, ground water, or surface
8 water on the site; ~~and~~

9 (i) a description of the human and environmental exposure to ~~contamination at the site~~ RELEASES
10 OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES AT THE FACILITY based
11 upon the ~~property's~~ current use OF THE FACILITY AND ADJACENT PROPERTIES and any reasonably
12 anticipated future use ~~proposed by the property owner~~ USES OF THE FACILITY; AND

13 (J) READILY AVAILABLE INFORMATION ON THE ENVIRONMENTAL REGULATORY AND
14 COMPLIANCE HISTORY OF THE FACILITY, INCLUDING ALL ENVIRONMENTAL PERMITS.

15 (3) A REMEDIATION PROPOSAL MUST INCLUDE THE FOLLOWING INFORMATION:

16 (A) A DETAILED DESCRIPTION OF THE COMPONENTS OF THE REMEDIATION PROPOSAL,
17 INCLUDING, TO THE EXTENT APPLICABLE:

18 (I) THE PROPOSED CLEANUP LEVELS FOR THE FACILITY;

19 (II) THE MANNER IN WHICH THE REMEDIATION PLAN SATISFIES THE CLEANUP REQUIREMENTS
20 OF 75-10-721;

21 (III) IDENTIFICATION OF SAMPLING OR TREATABILITY STUDIES; AND

22 (IV) A DEMONSTRATION THAT EXPOSURES TO RISK AFFECTING THE PUBLIC HEALTH, SAFETY,
23 AND WELFARE AND THE ENVIRONMENT AT THE FACILITY WILL BE SUBSTANTIALLY MITIGATED BY THE
24 PLAN;

25 (B) A BRIEF COMPARISON OF THE REMEDIATION PROPOSAL TO REASONABLE ALTERNATIVES
26 BASED ON THE REMEDY SELECTION CRITERIA SPECIFIED IN 75-10-721;

27 (C) A TIMETABLE FOR IMPLEMENTING THE PROPOSAL AND FOR ANY NECESSARY MONITORING
28 OF THE FACILITY AFTER THE PROPOSED MEASURES ARE COMPLETED;

29 (D) A STATEMENT THAT APPLICABLE HEALTH AND SAFETY REGULATIONS WILL BE MET
30 DURING IMPLEMENTATION OF THE REMEDIATION PROPOSAL;

1 (E) A DESCRIPTION OF HOW SHORT-TERM DISTURBANCES DURING IMPLEMENTATION OF THE
2 REMEDATION PROPOSAL WILL BE MINIMIZED; AND

3 (F) IDENTIFICATION OF ANY PERMITS NECESSARY TO CONDUCT THE PROPOSED REMEDIES.

4
5 NEW SECTION. SECTION 9. PUBLIC PARTICIPATION. (1) UPON DETERMINATION BY THE
6 DEPARTMENT THAT AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN IS COMPLETE PURSUANT
7 TO [SECTION 8(1) 9(1) 10(1)], THE DEPARTMENT SHALL PUBLISH A NOTICE AND BRIEF ANALYSIS OF
8 THE PROPOSED PLAN IN A DAILY NEWSPAPER OF GENERAL CIRCULATION IN THE AREA AFFECTED
9 AND MAKE THE PLAN AVAILABLE TO THE PUBLIC.

10 (2) THE NOTICE MUST PROVIDE 30 DAYS FOR SUBMISSION OF WRITTEN COMMENTS TO THE
11 DEPARTMENT REGARDING THE PLAN. UPON WRITTEN REQUEST BY 10 OR MORE PERSONS, BY A
12 GROUP COMPOSED OF 10 OR MORE MEMBERS, OR BY A LOCAL GOVERNING BODY OF A CITY, TOWN,
13 OR COUNTY WITHIN THE COMMENT PERIOD, THE DEPARTMENT SHALL CONDUCT A PUBLIC MEETING
14 AT OR NEAR THE FACILITY REGARDING THE PROPOSED VOLUNTARY CLEANUP PLAN. THE MEETING
15 MUST BE HELD WITHIN 45 DAYS OF THE DEPARTMENT'S COMPLETENESS DETERMINATION UNDER
16 [SECTION 8(1) 9(1) 10(1)].

17 (3) THE DEPARTMENT SHALL CONSIDER AND RESPOND TO RELEVANT WRITTEN OR VERBAL
18 COMMENTS SUBMITTED DURING THE COMMENT PERIOD OR AT THE PUBLIC MEETING.

19 (4) THE DEPARTMENT'S DECISION ON THE FINAL PLAN AND THE REASONS FOR ANY
20 SIGNIFICANT MODIFICATION OF THE FINAL PLAN MUST BE PUBLISHED IN ACCORDANCE WITH
21 SUBSECTION (1).

22 (5) COMPLIANCE WITH THIS SECTION IS CONSIDERED TO SATISFY THE PUBLIC PARTICIPATION
23 REQUIREMENTS OF TITLE 75, CHAPTER 1.

24
25 NEW SECTION. Section 10. Approval of voluntary action CLEANUP plan -- time limits -- content
26 of notice -- expiration of approval. (1) ~~(a) The~~ THE DEPARTMENT SHALL REVIEW FOR COMPLETENESS,
27 INCLUDING ADEQUACY AND ACCURACY, AN APPLICATION FOR A VOLUNTARY CLEANUP PLAN AND
28 SHALL PROVIDE A WRITTEN COMPLETENESS NOTICE TO THE APPLICANT WITHIN 30 DAYS AFTER
29 RECEIPT OF THE APPLICATION. THE COMPLETENESS NOTICE MUST NOTE ALL DEFICIENCIES
30 IDENTIFIED IN THE INFORMATION SUBMITTED.

1 (2) FOR A VOLUNTARY CLEANUP PLAN THAT IS CONSIDERED COMPLETE BY THE DEPARTMENT
2 PURSUANT TO SUBSECTION (1), THE department shall provide formal written notification that a THE
3 voluntary cleanup plan has been approved or disapproved ~~within~~ NO MORE THAN 60 days after a request
4 ~~by a property owner~~ THE DEPARTMENT'S DETERMINATION THAT AN APPLICATION IS COMPLETE, unless
5 the ~~property owner or person who may be liable under 75-10-715(1)~~ APPLICANT and the department agree
6 to an extension of the review to a date certain. The review must be limited to a review of the materials
7 submitted by the applicant, PUBLIC COMMENTS, and documents or information readily available to the
8 department. ~~If the department fails to act on an application within the time limits specified in this~~
9 ~~subsection (1), the voluntary cleanup plan is approved.~~ THE DEPARTMENT SHALL COMMUNICATE WITH
10 THE APPLICANT DURING THE REVIEW PERIOD TO ENSURE THAT THE APPLICANT HAS THE
11 OPPORTUNITY TO ADDRESS THE PUBLIC COMMENTS.

12 (3) (A) IF THE DEPARTMENT RECEIVES FIVE APPLICATIONS FOR REVIEW OF A VOLUNTARY
13 CLEANUP PLAN IN A CALENDAR MONTH, INCLUDING APPLICATIONS DEFERRED FROM PRIOR MONTHS,
14 THE DEPARTMENT MAY NOTIFY ANY ADDITIONAL APPLICANTS IN THAT MONTH THAT THEIR PLANS
15 MUST BE REVIEWED IN THE ORDER RECEIVED. THE 30-DAY PERIOD FOR DEPARTMENT
16 COMPLETENESS REVIEW OF DEFERRED APPLICATIONS PURSUANT TO SUBSECTION (1) MUST BEGIN
17 ON THE FIRST DAY OF THE SUBSEQUENT MONTH THAT EACH PLAN IS ELIGIBLE FOR REVIEW.

18 (B) THE DEPARTMENT SHALL DISCONTINUE ACCEPTING VOLUNTARY CLEANUP APPLICATIONS
19 WHEN 15 APPLICATIONS ARE PENDING AND ARE BEING REVIEWED BY THE DEPARTMENT. THE
20 DEPARTMENT SHALL ESTABLISH A WAITING LIST FOR APPLICATIONS AND SHALL CONSIDER THE
21 APPLICATIONS IN ORDER OF SUBMITTAL.

22 (C) IF THE DEPARTMENT HAS RECEIVED MULTIPLE CLEANUP APPLICATIONS FOR A
23 VOLUNTARY CLEANUP AT THE SAME FACILITY, THE DEPARTMENT SHALL NOTIFY ALL OF THE
24 APPLICANTS AND OFFER THEM THE OPPORTUNITY TO SUBMIT A JOINT APPLICATION.

25 (4) CONSISTENT WITH THE PROVISIONS OF 75-10-707, THE DEPARTMENT MAY ACCESS THE
26 FACILITY DURING REVIEW OF THE APPLICATION AND IMPLEMENTATION OF THE VOLUNTARY CLEANUP
27 PLAN TO CONFIRM INFORMATION PROVIDED BY THE APPLICANT AND VERIFY THAT THE CLEANUP IS
28 BEING CONDUCTED CONSISTENT WITH THE APPROVED PLAN.

29 ~~(b)(5)~~ (5) The department shall approve a voluntary cleanup plan if, ~~based on the information submitted~~
30 ~~by the property owner or person who may be liable under 75-10-715(1),~~ the department concludes that

the plan MEETS THE REQUIREMENTS SPECIFIED IN [SECTION 6 7 8] AND will attain a degree of cleanup and control of hazardous or deleterious substances, ~~or both~~, that complies with the requirements of 75-10-721. EXCEPT FOR THE PERIOD NECESSARY FOR THE OPERATION AND MAINTENANCE OF THE APPROVED REMEDIATION PROPOSAL, THE DEPARTMENT MAY NOT APPROVE A VOLUNTARY REMEDIATION PROPOSAL THAT WOULD TAKE LONGER THAN 24 MONTHS AFTER DEPARTMENT APPROVAL TO COMPLETE.

~~(e)(6)~~ If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. ~~If the department disapproves a voluntary cleanup plan based upon the applicant's failure to submit the information required by [section 12], the department shall notify the applicant of the specific information omitted by the applicant.~~

~~(d)(7)~~ The approval of a voluntary cleanup plan by the department applies only to conditions on the property AT THE FACILITY that ~~exist as of~~ ARE KNOWN TO THE DEPARTMENT AT the time of submission of the application DEPARTMENT APPROVAL. If a voluntary cleanup plan REMEDIAL PROPOSAL is not initiated within 12 months and, EXCEPT FOR THE PERIOD NECESSARY FOR THE OPERATION AND MAINTENANCE OF THE APPROVED REMEDIATION PROPOSAL, IS NOT completed within 24 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

(8) IF REASONABLY UNFORESEEABLE CONDITIONS ARE DISCOVERED DURING IMPLEMENTATION OF A VOLUNTARY CLEANUP PLAN THAT SUBSTANTIALLY AFFECT THE RISK TO PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT OR SUBSTANTIALLY CHANGE THE SCOPE OF THE APPROVED PLAN, THE APPLICANT SHALL PROMPTLY NOTIFY THE DEPARTMENT. THE DEPARTMENT MAY REQUIRE THE APPLICANT TO SUBMIT AN AMENDMENT TO THE APPROVED PLAN TO ADDRESS THE UNFORESEEN CONDITIONS OR MAY DETERMINE THAT A VOLUNTARY CLEANUP PLAN IS NO LONGER APPROPRIATE PURSUANT TO [SECTION 4(3) 5(3) 6(3)].

~~(2)(9)~~ Written notification by the department that a voluntary cleanup plan is NOT approved must ~~contain~~ STATE the basis for the approval DISAPPROVAL OF THE VOLUNTARY CLEANUP PLAN.

~~(3)(10)~~ (a) Failure of ~~a property owner~~ THE APPLICANT OR THE APPLICANT'S AGENTS to materially comply with the voluntary cleanup plan approved by the department pursuant to this section renders the approval void.

(b) Submission of materially misleading information by the applicant OR THE APPLICANT'S

1 AGENTS in the APPLICATION OR DURING IMPLEMENTATION OF THE voluntary cleanup plan renders the
2 department approval void.

3 ~~(4)(11)~~ Within 60 days after the completion of the ~~voluntary cleanup~~ APPROVED REMEDIATION
4 PROPOSAL described in the voluntary cleanup plan approved by the department, the applicant shall provide
5 to the department a certification from a qualified environmental professional that the plan has been fully
6 implemented, INCLUDING ALL DOCUMENTATION NECESSARY TO DEMONSTRATE THE SUCCESSFUL
7 IMPLEMENTATION OF THE PLAN, SUCH AS CONFIRMATION SAMPLING, IF NECESSARY.

8 (12) EXCEPT AS PROVIDED IN [SECTION 40(2)(B) 11(2)(B) 12(2)(B)], THE DEPARTMENT MAY
9 NOT REQUIRE FINANCIAL ASSURANCE UNDER THIS PART FOR VOLUNTARY CLEANUP PLANS
10 APPROVED UNDER THIS SECTION.

11 (13) IF A PERSON WHO WOULD OTHERWISE NOT BE A LIABLE PERSON UNDER 75-10-715(1)
12 ELECTS TO UNDERTAKE AN APPROVED VOLUNTARY CLEANUP PLAN, THE PERSON MAY NOT BECOME
13 A LIABLE PERSON UNDER 75-10-715(1) BY UNDERTAKING A VOLUNTARY CLEANUP IF THE PERSON
14 MATERIALLY COMPLIES WITH THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT
15 PURSUANT TO THIS SECTION.

16 ~~(14) AFTER COMPLETION OF AN APPROVED VOLUNTARY CLEANUP PLAN OR PHASE OF A~~
17 ~~PLAN, A PERSON WHO IS LIABLE UNDER 75-10-715(1) AND INCURS REMEDIAL ACTION COSTS MAY~~
18 ~~SEEK CONTRIBUTION AND REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND~~
19 ~~PURSUANT TO THE REQUIREMENTS AND LIMITATIONS OF 75-10-724.~~

20 (14) IMMUNITY FROM LIABILITY UNDER THIS SECTION DOES NOT APPLY TO A RELEASE THAT
21 IS CAUSED BY CONDUCT THAT IS NEGLIGENT OR GROSSLY NEGLIGENT OR THAT CONSTITUTES
22 INTENTIONAL MISCONDUCT.

23
24 NEW SECTION. Section 11. Voluntary action to preclude remedial action by department. If a party
25 has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan,
26 the department may not, except as provided in 75-10-712, take remedial action under 75-10-711 WITH
27 REGARD TO THOSE RELEASES OR THREATENED RELEASES OF HAZARDOUS OR DELETERIOUS
28 SUBSTANCES THAT ARE ADDRESSED BY THE APPROVED VOLUNTARY CLEANUP PLAN.

29
30 NEW SECTION. Section 12. Closure and release from liability. (1) After completion of the

remedial actions required by the department under this part or the voluntary action plan, a property owner or any person who may be liable under 75-10-715(1) VOLUNTARY CLEANUP PLAN, AN APPLICANT may petition the department for closure of the site and release from liability for remedial actions and remedial action costs FACILITY under [sections 10 ~~2 3 4~~ through 16 ~~10 11~~ 12].

(2) The WITHIN 60 DAYS OF RECEIPT OF A PETITION FOR CLOSURE, WEATHER PERMITTING, THE department shall CONDUCT A review ~~the site~~ to determine that the site ~~does~~ RELEASES OR THREATENED RELEASES ADDRESSED IN THE VOLUNTARY CLEANUP PLAN DO not pose a significant threat to public health, welfare, or safety or to the environment as determined in accordance with 75-10-721 and that the ~~responsible parties have~~ APPLICANT HAS:

(a) implemented all appropriate ~~response~~ REMEDIAL actions; and

(b) IF NECESSARY, provided for long-term funding for site FACILITY maintenance or monitoring;

AND

(C) REIMBURSED THE DEPARTMENT FOR ALL REMEDIAL ACTION COSTS OF THE VOLUNTARY CLEANUP.

(3) In the event that the petition for closure and release from liability is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. Written notification that the petition is approved by the department must include the following language:

"Based upon the information provided by [insert name(s) of ~~property owner(s)~~ APPLICANT(S)] concerning property located at [insert address], it is the opinion of the Montana Department of Health and Environmental Sciences that upon completion of the ~~remedial action or voluntary cleanup plan:~~

~~(1) no further action is required to ensure that this property, when used for the purposes identified, is protective of existing and proposed uses and does not pose an unacceptable risk to the public health, welfare, or safety or to the environment at the site; and~~

~~(2) [insert name(s) of property owner(s) or any person who may be liable under 75-10-715(1)] are released from any liability, claims, or causes of action for remedial costs and remedial actions at the site."~~
VOLUNTARY CLEANUP PLAN, NO FURTHER ACTION IS REQUIRED TO ENSURE THAT THIS FACILITY, WHEN USED FOR THE [INSERT PURPOSES IDENTIFIED], IS PROTECTIVE OF EXISTING AND PROPOSED USES AND DOES NOT POSE A SIGNIFICANT RISK TO PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT AT THE FACILITY WITH REGARD TO RELEASES OR THREATENED RELEASES ADDRESSED

1 IN THE VOLUNTARY CLEANUP PLAN. THE DEPARTMENT RESERVES THE RIGHT TO CONDUCT OR
2 REQUIRE FURTHER REMEDIAL ACTION AT THIS FACILITY IF A NEW RELEASE OCCURS OR IF THE
3 DEPARTMENT RECEIVES NEW OR DIFFERENT INFORMATION THAN PRESENTED IN THE APPROVED
4 VOLUNTARY CLEANUP PLAN."

5 (4) AFTER COMPLETION OF A PORTION OF A FACILITY ADDRESSED IN THE VOLUNTARY
6 CLEANUP PLAN, THE DEPARTMENT SHALL ISSUE A LETTER OF COMPLETION NOTICE TO THE
7 APPLICANT IF THE DEPARTMENT DETERMINES THAT THE APPLICANT HAS SATISFIED THE
8 REQUIREMENTS OF SUBSECTION (2).

9
10 ~~Section 17. Section 85-1-604, MCA, is amended to read:~~

11 ~~"85-1-604. Renewable resource grant and loan program state special revenue account created—~~
12 ~~revenues allocated—limitations on appropriations from account. (1) There is created a renewable resource~~
13 ~~grant and loan program state special revenue account within the state special revenue fund established in~~
14 ~~17-2-102.~~

15 ~~(2) Except to the extent that they are required to be credited to the renewable resource loan debt~~
16 ~~service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program~~
17 ~~state special revenue account:~~

18 ~~(a) all revenues of the works and other money as provided in 85-1-332;~~

19 ~~(b) 38% of the amount of interest income of the resource indemnity trust fund as provided in and~~
20 ~~subject to the conditions of 15-38-202;~~

21 ~~(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource~~
22 ~~loan debt service fund above debt service requirements as provided in and subject to the conditions of~~
23 ~~85-1-619;~~

24 ~~(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of~~
25 ~~loans, including arrangements for obtaining security interests; and~~

26 ~~(e) 20% of the resource indemnity tax proceeds.~~

27 ~~(3) Appropriations may be made from the renewable resource grant and loan program state special~~
28 ~~revenue account for the following purposes and subject to the following conditions:~~

29 ~~(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b)~~
30 ~~must be used for renewable resource grants.~~

~~(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (b) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).~~

~~(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(b) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewable resource grant and loan program. If the amount of money available for appropriation under this subsection (c) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).~~

~~(d) An amount less than or equal to that paid into the account from the sources provided for in subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be appropriated from the account for:~~

~~(i) loans and grants for renewable resource projects;~~

~~(ii) for purchase of liens and operation of property as provided in 85-1-615;~~

~~(iii) for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space;~~

~~(iv) for the servicing of loans, including arrangements for obtaining security interests; and~~

~~(v) for other necessities incurred in administering the loans and grants."~~

NEW SECTION. SECTION 13. STUDY PROCESS. THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, WITH LEGISLATIVE OVERSIGHT FROM THE ENVIRONMENTAL QUALITY COUNCIL, SHALL INSTITUTE A COLLABORATIVE PROCESS INVOLVING ALL AFFECTED AND INTERESTED PARTIES THAT SPECIFICALLY ANALYZES THE ELIMINATION OF JOINT AND SEVERAL LIABILITY WITH RESPECT TO CLEANUP OF STATE CECRA SITES AND ANY RELATED FUNDING NECESSARY TO CLEAN UP STATE CECRA SITES AS A RESULT OF ELIMINATING JOINT AND SEVERAL LIABILITY. THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL SUBMIT A REPORT AND LEGISLATIVE PROPOSALS THAT COLLABORATIVELY RESULTED FROM THAT PROCESS TO THE 55TH LEGISLATURE.

1 NEW SECTION. SECTION 14. SHORT TITLE. [SECTIONS 14 THROUGH 20] MAY BE CITED AS
2 THE "MIXED FUNDING PILOT PROGRAM".

3
4 NEW SECTION. SECTION 15. PURPOSE -- LEGISLATIVE DECLARATION. (1) THE PURPOSES
5 OF [SECTIONS 14 THROUGH 20] ARE TO ESTABLISH A PILOT REMEDIATION PROGRAM TO OPERATE
6 IN CONJUNCTION WITH THE VOLUNTARY CLEANUP PROGRAM PROVIDED FOR IN [SECTIONS 4
7 THROUGH 12] AND TO PROVIDE INFORMATION DURING THE 2-YEAR STUDY PROCESS IN [SECTION 13].

8 (2) THE LEGISLATURE FURTHER INTENDS THAT THE PILOT PROGRAM PROVIDE NECESSARY
9 DATA RELATED TO:

10 (A) ACTUAL COSTS INCURRED IN THE REMEDIATION OF FACILITIES;
11 (B) THE COSTS ASSOCIATED WITH THE ELIMINATION OF JOINT AND SEVERAL LIABILITY;
12 (C) THE POTENTIAL USE OF RESOURCE INDEMNITY TRUST FUND MONEY IN REMEDIATING
13 FACILITIES;
14 (D) THE FEASIBILITY OF VOLUNTARY CLEANUP PLANS; AND
15 (E) THE COORDINATION BETWEEN AN APPLICANT AND THE DEPARTMENT IN THE USE OF
16 VOLUNTARY CLEANUP PROGRAMS.

17
18 NEW SECTION. SECTION 16. CRITERIA. (1) THE PILOT PROGRAM MUST CONSIST OF
19 REMEDICATION OF THREE SITES FROM THE DEPARTMENT OF STATE LANDS' ABANDONED HARD-ROCK
20 MINE PRIORITY LIST. THE THREE SITES MUST BE SELECTED FROM THE TOP TEN PRIORITY SITES ON
21 THAT LIST AS OF APRIL 1, 1995.

22 (2) ANY SITE REMEDIATED UNDER THIS PILOT PROGRAM MUST MEET THE FOLLOWING
23 CRITERIA:

24 (A) THE OWNER OF THE PROPERTY HAS, PRIOR TO MAY 22, 1989, PURCHASED OR ENTERED
25 INTO A LEASE PURCHASE AGREEMENT OR AN OPTION TO PURCHASE PROPERTY WHERE THE FACILITY
26 IS LOCATED.

27 (B) THE APPLICANT HAS SUBMITTED A VOLUNTARY CLEANUP PLAN IN ACCORDANCE WITH
28 THE PROVISIONS OF [SECTIONS 7 AND 8].

29 (C) THE DEPARTMENT HAS ACCEPTED AND APPROVED THE APPLICATION FOR A VOLUNTARY
30 CLEANUP PLAN IN ACCORDANCE WITH THE PROVISIONS OF [SECTIONS 6 THROUGH 10].

1 (3) THE DEPARTMENT AND THE APPLICANT SHALL NEGOTIATE AN APPORTIONMENT OF THE
2 APPLICANT'S LIABILITY PURSUANT TO [SECTION 17]. THE DEPARTMENT, AS A TRIER OF FACT, SHALL
3 MAKE THE FINAL DETERMINATION OF THE APPLICANT'S APPORTIONED LIABILITY. IF THE APPLICANT
4 DISAGREES WITH THE DEPARTMENT'S DETERMINATION OF THE APPLICANT'S PROPORTIONATE SHARE
5 OF LIABILITY, THE APPLICANT MAY APPEAL THE DEPARTMENT'S DECISION IN ACCORDANCE WITH
6 THE REQUIREMENTS OF [SECTION 6(4)].

7 (4) IF MORE THAN THREE APPLICANTS SUBMIT VOLUNTARY CLEANUP PLANS FOR THE
8 HIGHEST PRIORITY SITES ON THE DEPARTMENT OF STATE LANDS' ABANDONED HARD-ROCK MINE
9 PRIORITY LIST AND THE DEPARTMENT APPROVES MORE THAN THREE PLANS, THE DEPARTMENT
10 SHALL SELECT THREE PLANS TO INCORPORATE INTO THE PILOT PROGRAM ON A PRIORITY BASIS AS
11 DETERMINED BY THE DATE OF SUBMITTAL OF A COMPLETE APPLICATION.

12
13 NEW SECTION. SECTION 17. MIXED FUNDING -- DETERMINATION OF LIABILITY. (1) AN
14 APPLICANT WHO SATISFIES THE REQUIREMENTS OF [SECTION 16(2)] SHALL MEET WITH THE
15 DEPARTMENT WITHIN 30 DAYS OF APPROVAL OF THE VOLUNTARY CLEANUP PLAN TO NEGOTIATE
16 AN APPORTIONMENT OF LIABILITY FOR THE SITE. THE BURDEN IS ON THE APPLICANT TO SHOW HOW
17 THE APPLICANT'S LIABILITY SHOULD BE APPORTIONED. IN APPORTIONING THE LIABILITY OF THE
18 APPLICANT UNDER THIS SECTION, THE DEPARTMENT SHALL BALANCE ALL OF THE FOLLOWING
19 FACTORS:

20 (A) THE EXTENT TO WHICH THE APPLICANT CAUSED THE RELEASE OF THE HAZARDOUS OR
21 DELETERIOUS SUBSTANCE;

22 (B) THE EXTENT TO WHICH AN APPLICANT'S CONTRIBUTION TO THE RELEASE OF A
23 HAZARDOUS OR DELETERIOUS SUBSTANCE CAN BE DIMINISHED;

24 (C) THE AMOUNT OF THE HAZARDOUS OR DELETERIOUS SUBSTANCE INVOLVED;

25 (D) THE DEGREE OF TOXICITY OF THE HAZARDOUS OR DELETERIOUS SUBSTANCE INVOLVED;

26 (E) THE DEGREE OF INVOLVEMENT OF AND CARE EXERCISED BY THE APPLICANT IN
27 MANUFACTURING, TREATING, TRANSPORTING, OR DISPOSING OF THE HAZARDOUS OR DELETERIOUS
28 SUBSTANCE;

29 (F) THE DEGREE OF COOPERATION BY THE APPLICANT WITH STATE OR LOCAL OFFICIALS TO
30 PREVENT ANY HARM TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR TO THE ENVIRONMENT; AND

1 (G) THE APPLICANT'S KNOWLEDGE OF THE HAZARDOUS NATURE OF THE SUBSTANCE.

2 (2) ONCE THE DEPARTMENT AND THE APPLICANT HAVE NEGOTIATED AN APPORTIONMENT
3 OF THE APPLICANT'S LIABILITY, THE APPLICANT HAS A RIGHT OF REIMBURSEMENT SUBJECT TO THE
4 REQUIREMENTS AND LIMITATIONS OF [SECTION 18].

5
6 NEW SECTION. SECTION 18. CLAIMS FOR AND LIMITATIONS ON REIMBURSEMENT. (1) AFTER
7 COMPLETION OF THE VOLUNTARY CLEANUP PLAN APPROVED BY THE DEPARTMENT, THE APPLICANT
8 MAY APPLY TO AND MUST, IN ACCORDANCE WITH THIS SECTION, RECEIVE REIMBURSEMENT FROM
9 THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT. REIMBURSEMENT MUST BE SUBJECT
10 TO THE FOLLOWING REQUIREMENTS AND LIMITATIONS:

11 (A) THE APPLICANT SHALL COMPLETE REMEDIATION PRIOR TO MAKING A CLAIM FOR
12 REIMBURSEMENT.

13 (B) THE REIMBURSEMENT MAY NOT EXCEED 90% OF ELIGIBLE COSTS UP TO A MAXIMUM OF
14 \$300,000 PER FACILITY.

15 (C) THE CLAIM FOR REIMBURSEMENT MAY NOT INCLUDE LEGAL FEES OR DEPARTMENT COSTS
16 INCURRED IN THE OVERSIGHT OF THE VOLUNTARY CLEANUP PLAN.

17 (2) FOR PURPOSES OF THIS SECTION, "ELIGIBLE COSTS" MEANS COSTS IN EXCESS OF AN
18 APPLICANT'S PROPORTIONATE SHARE OF TOTAL COSTS INCURRED IN THE REMEDIATION OF THE SITE
19 DURING THE 1996-97 BIENNIUM.

20 (3) IF COSTS ARE REIMBURSED OUT OF THE ABANDONED MINES STATE SPECIAL REVENUE
21 ACCOUNT, NOTHING IN [SECTIONS 14 THROUGH 20] PROHIBITS THE DEPARTMENT FROM PURSUING
22 AN ACTION AGAINST OTHER POTENTIALLY LIABLE PARTIES TO RECOVER THOSE COSTS.

23 (4) IF THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT DOES NOT CONTAIN
24 SUFFICIENT MONEY TO PAY RECEIVED CLAIMS FOR REIMBURSEMENT, THE ABANDONED MINES STATE
25 SPECIAL REVENUE ACCOUNT AND THE DEPARTMENT ARE NOT LIABLE FOR MAKING ANY
26 REIMBURSEMENT AT THAT TIME. ALL CLAIMS ARE SUBJECT TO APPROPRIATIONS TO THE
27 ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT.

28
29 NEW SECTION. SECTION 19. ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT
30 CREATED. (1) THERE IS AN ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT WITHIN THE

1 STATE SPECIAL REVENUE ACCOUNT FUND ESTABLISHED IN 17-2-102.

2 (2) THERE MUST BE PAID INTO THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT
3 MONEY ALLOCATED FROM THE METALLIFEROUS MINES LICENSE TAX PURSUANT TO 15-37-117.

4 (3) DEPOSITS TO THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT MUST BE
5 PLACED IN SHORT-TERM INVESTMENTS. THE INTEREST ON SHORT-TERM INVESTMENTS MUST BE
6 DEPOSITED IN THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT.

7 (4) THE PURPOSE OF THE ABANDONED MINES STATE SPECIAL REVENUE ACCOUNT IS TO
8 PROVIDE THE FUNDING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE
9 CLEANUP AND RECLAMATION OF SITES ELIGIBLE FOR THE PILOT PROGRAM IN [SECTIONS 14
10 THROUGH 20].

11
12 NEW SECTION. SECTION 20. INCORPORATION INTO STUDY PROCESS -- REPORT TO
13 LEGISLATURE. THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND APPLICANTS
14 PARTICIPATING IN THE PILOT PROGRAM SHALL SUBMIT REPORTS TO THE 55TH LEGISLATURE
15 DETAILING THE SUCCESS OF AND DIFFICULTIES WITH THE OPERATION OF THE PILOT PROGRAM.

16
17 SECTION 21. SECTION 15-37-117, MCA, IS AMENDED TO READ:

18 "15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes
19 collected under the provisions of this part must, in accordance with the provisions of 15-1-501(6), be
20 allocated as follows:

21 (a) to the credit of the general fund of the state, 58% of total collections each year;
22 (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5%
23 of total collections each year;

24 (c) ~~to the state resource indemnity trust fund, 15.5%~~ to the abandoned mines state special revenue
25 account provided for in [section 19], 8.5% of total collections each year;

26 (d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in
27 increased employment or local government costs, under an impact plan for a large-scale mineral
28 development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic
29 impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine
30 is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

1 (i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225;
2 and

3 (ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated
4 as follows:

5 (A) 33 1/3% is allocated to the county for planning or economic development activities;

6 (B) 33 1/3% is allocated to the elementary school districts within the county that have been
7 affected by the development or operation of the metal mine; and

8 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by
9 the development or operation of the metal mine.

10 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307
11 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under
12 subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6,
13 part 4.

14 (3) The department shall return to the county in which metals are produced the tax collections
15 allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory
16 appropriation pursuant to 17-7-502."

17
18 NEW SECTION. SECTION 22. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 569 AND
19 [THIS ACT] ARE BOTH PASSED AND APPROVED, THE AMENDMENT TO 15-37-117(1)(C) IN HOUSE BILL
20 NO. 569, RELATING TO THE PERCENTAGE ALLOCATION TO THE RESOURCE INDEMNITY TRUST FUND,
21 IS VOID.

22
23 NEW SECTION. Section 23. Severability. If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
25 applications, the part remains in effect in all valid applications that are severable from the invalid
26 applications.

27
28 NEW SECTION. Section 24. Codification instructions. ~~(1) [Section 9] is intended to be codified~~
29 ~~as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 9].~~

30 ~~(2) [Sections 10 2 3 4 through 16 10 11 12] are intended to be codified as an integral part of Title~~

75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections ~~10 2 3 4~~
through ~~10 10 11 12~~].

NEW SECTION. Section 25. Applicability. ~~(1) [This act] applies to all pending actions or~~
~~proceedings by the state~~ **DOES NOT APPLY TO CIVIL OR ADMINISTRATIVE ACTIONS COMMENCED OR**
BEGUN PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] OR TO CLAIMS BASED ON THOSE ACTIONS.
CLAIMS FOR REIMBURSEMENT FROM THE ENVIRONMENTAL QUALITY PROTECTION FUND MAY NOT
BE SUBMITTED FOR ANY COSTS INCURRED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

(2) [SECTIONS 2 4 THROUGH 10 12] APPLY AFTER JANUARY 1, 2001, TO VOLUNTARY
CLEANUP PLANS APPROVED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
BETWEEN [THE EFFECTIVE DATE OF THIS ACT] AND JANUARY 1, 2001.

NEW SECTION. SECTION 26. EFFECTIVE DATE. **[THIS ACT] IS EFFECTIVE ON PASSAGE AND**
APPROVAL.

NEW SECTION. SECTION 27. TERMINATION. **(1) [SECTIONS 2 4 THROUGH 10 12] TERMINATE**
JANUARY 1, 2001.

(2) [SECTIONS 14 THROUGH 21] TERMINATE JUNE 30, 1997.

NEW SECTION. Section 21. Effective date. ~~[This act] is effective on passage and approval.~~

-END-